

EXHIBIT C

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From: Purcell, Bradley
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To: Miriam Goott
Cc: Aurzada, Keith M.; Robin, Lindsey L.
Subject: Vitol expert report
Attachments: Expert Report Gene L. Deetz April 1 2022_signed.pdf

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Miriam,

Attached is Vitol's expert report. Please let us know when you would like to depose Mr. Deetz.

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

In re:

ARTHUR JACOB BRASS,

Debtor.

Chapter 7

Case No. 21-60025

VITOL INC.

v.

ARTHUR JACOB BRASS

Adversary No. 21-06006

**Expert Report of
Gene L. Deetz**

April 1, 2022



TABLE OF CONTENTS

I.	BACKGROUND	1
II.	SCOPE OF WORK.....	3
III.	QUALIFICATIONS	4
IV.	SUMMARY OF OPINIONS	6
V.	DETAILED ANALYSIS.....	7
	<i>A. Accounting for the Vitol/GCAC Transactions.....</i>	<i>7</i>
	<i>B. GCAC’s Investments/Loan in Other Affiliated Companies.....</i>	<i>12</i>
	<i>C. GCAC was insolvent at June 30, 2017, at December 31, 2017, and at January 31, 2018.....</i>	<i>14</i>
	<i>i. Balance Sheet Test</i>	<i>15</i>
	<i>ii. Capital Adequacy Test.....</i>	<i>25</i>
	<i>iii. Cash Flow Test</i>	<i>28</i>
	<i>D. Transfers to Insiders.....</i>	<i>30</i>

LIST OF APPENDICES AND EXHIBITS

Appendix I: Deetz CV

Appendix II: Documents Considered

- Exhibit 1: Unadjusted Monthly GCAC Balance Sheets from June 30, 2017 through January 31, 2018.
- Exhibit 1.1: Base Case: Adjusts GCAC's Net Assets to Write-off Investments/Loan Accounts.
- Exhibit 1.2: Sensitivity Case: Adjusts GCAC's Net Assets to Write-off Investments/Loan Accounts and Adjusts \$14.8 million in Accounts Payable Contingent Liabilities to Vitol's \$10 million Judgment.
- Exhibit 2: Actual and Adjusted – GCAC's Monthly and Cumulative Income Before Taxes from June 30, 2017 through January 31, 2018.
- Exhibit 3: Summary of GCAC's General Ledger Accounts 1250-Loan AJ Brass, and 1270-Loan Joyce Brass, January 1, 2015 through June 30, 2019.
- Exhibit 4: Non-operating GCAC Entities – Summary of Assets and Liabilities, January 2017 through December 31, 2018.
- Exhibit 5: Non-operating GCAC Entities – Summary of Monthly Losses, January 2017 through December 2017.
- Exhibit 6: Non-operating GCAC Entities – Summary of Monthly Revenues and Expenses, January 2017 through December 2017.
- Exhibit 7: GCAC's Cash Sales and Payments for Product Inventory, July 2017 through January 2018.
- Exhibit 8: GCAC's Monthly Net Working Capital, Including Cash, June 30, 2017 through January 31, 2018.
- Exhibit 9: Vitol's Calculation of Amounts Due from GCAC Sent to Arthur on April 10, 2018 Compared to Amounts Recorded by GCAC.

Expert Report of Gene L. Deetz, April 1, 2022

I. BACKGROUND

1. Vitol, Inc. (“Vitol”), an energy and commodities company that ships and trades crude oil and other related products,¹ and Gulf Coast Asphalt Company, LLC (“GCAC”), a company that filed for voluntary Chapter 7 bankruptcy on March 26, 2021 (the “Petition Date”)² and previously marketed and traded asphalt and other related products for sale to third parties,³ entered into certain transactions from July 2017 through January 2018 (hereinafter referred to as the “Vitol/GCAC Transactions”) for the sale and purchase of asphalt product.
2. Arthur J. Brass (“Arthur”) was the president and 50% owner of GCAC, through a wholly owned entity, Trifinery, Inc. (“Trifinery”).^{4,5} The other 50% owner of GCAC was Joyce Brass (“Joyce”), Arthur’s mother.⁶
3. It is my understanding that the Vitol/GCAC Transactions were funded by Vitol and that Vitol is claiming, among other things, that it is entitled to repayment for the unpaid balance from GCAC.⁷
4. Prior to the Vitol/GCAC Transactions, GCAC had a Joint Marketing Agreement (“JMA”) with Rio Energy International, Inc. (“Rio”), a Houston, Texas based corporation engaged in the domestic and international trade of

¹ First Amended Complaint to Determine Dischargeability of Debts, paragraph 6.

² March 26, 2021 Chapter 7, Official Form 201 - Voluntary Petition for Non-Individuals Filing For Bankruptcy, Gulf Coast Asphalt Company, LLC and separately for Trifinery, Inc.

³ Arthur J. Brass Answer to Amended Complaint Filed by Vitol, Inc., paragraph 4.

⁴ Arthur J. Brass’ Motion to Dismiss Vitol’s Complaint with Prejudice for Failure to State Cause of Action Under Rule 12(b)(6), Relevant Background Facts, page 2 of 8.

⁵ First Amended Complaint to Determine Dischargeability of Debts, paragraph 6.

⁶ First Amended Complaint to Determine Dischargeability of Debts, paragraph 6.

⁷ GCAC’s general ledger shows a liability to Vitol of \$14.8 million as of December 31, 2017 [GCAC009845], and subsequently GCAC, Arthur Brass, and Trifinery jointly and severally agreed to a settlement and judgment in 2020 to repay Vitol \$10 million [November 20, 2020 Agreed and Final Judgment entered for Vitol against the Brass parties, BK-VITOL_0000954].

Expert Report of Gene L. Deetz, April 1, 2022

crude oil, petrochemicals, refinery feedstocks, and refined petroleum products,⁸ signed on or around February 25, 2016.⁹ In his June 18, 2018 Affidavit (“Arthur Affidavit”), Arthur described the JMA with Rio as an agreement to “...jointly pursue the sourcing, purchasing, blending, selling, and marketing of asphalt and asphalt related products.”¹⁰

5. During May and June 2017 leading up to the first of the series of Vitol/GCAC Transactions, Vitol and GCAC circulated various documents and draft language that outlined a potential joint venture between Vitol and GCAC¹¹ whereby Vitol would replace Rio.¹²

“In early 2017, GCAC and Vitol began discussions for Vitol to replace the regional firm [Rio] as GCAC’s partner in the JMA. The parties began exchanging draft agreements as early as May 2017. As of July 1, 2017, Vitol and GCAC began transacting under the JMA (the “Business”). After July 1, 2017, the parties continued to exchange drafts a contract to memorialize the agreement that had already commenced business operations.”

6. I have not reviewed a signed joint venture agreement between Vitol and GCAC and it is my understanding that the potential joint venture agreement described above was never signed by the parties.¹³ Further, GCAC recorded 100% of the amount requested by Vitol related to the Vitol/GCAC Transactions as a

⁸ <https://www.rioenergy.com/#!/about>.

⁹ Joint Marketing Agreement by and between Rio Energy International, Inc. and Gulf Coast Asphalt Company, LLC [VITOL_0078947 and VITOL_00078949].

¹⁰ June 28, 2018 Brass Deposition Exhibit 6, June 15, 2018 Affidavit of Arthur J. Brass, paragraph 3.

¹¹ *See for example*, June 2, 2017 draft redline of a potential JMA between Vitol and GCAC [VITOL_00004917 and VITOL_00004918].

¹² June 28, 2018 Brass Deposition Exhibit 6, June 15, 2018 Affidavit of Arthur J. Brass, paragraph 4.

¹³ Drafts of the JMA between Vitol and NewCo went unsigned. *See for example*, July 12 2017 email between Vitol and GCAC [GCAC001216, VITOL_9572]. Additionally, GCAC formed Hermosa Energy, LLC as the NewCo entity [Vitol_00009562, Vitol_00007640, July 3, 2017 Hermosa Energy LLC Certificate of Formation, and January 25, 2019 Charter Forfeiture]. I have seen no accounting records in the documents made available to me for Hermosa Energy LLC.

Expert Report of Gene L. Deetz, April 1, 2022

liability as of December 31, 2017,¹⁴ indicating that Vitol provided interim financing support for GCAC until it could find a replacement for Rio.¹⁵

II. SCOPE OF WORK

7. I have been asked by Reed Smith, LLP (“Reed Smith”), counsel to Vitol, to analyze the solvency and financial condition of GCAC as of three dates: June 30, 2017, December 31, 2017 and January 31, 2018, using the three recognized solvency tests: the balance sheet, adequate capital, and cash flow tests.¹⁶
8. Additionally, I was asked to prepare a summary of the accounting for the Vitol/GCAC Transactions, and document GCAC’s use of the proceeds from the sales of asphalt (originally purchased by Vitol) by GCAC to third parties, and the transfers from GCAC to Arthur and Joyce.
9. The documents I considered in rendering my opinions in this report are contained in Appendix II and include the general ledger of GCAC, monthly balance sheets, income statements, and other accounting documents of GCAC, bank records of GCAC, Vitol and GCAC analysis and correspondence of the status of the asphalt purchases and sales, settlement correspondence and pleadings, depositions of Arthur, and other materials produced and subpoenaed in this proceeding.

¹⁴ GCAC’s general ledger [GCAC 009845].

¹⁵ August 21, 2017 email and attachment from Arthur to Eric Kuo subject: Vitol Interim Financing Structure Bullets v2.docx [GCAC004694, GCAC004695].

¹⁶ 11 U.S. Code § 548(a) and the Uniform Voidable Transactions Act.

Expert Report of Gene L. Deetz, April 1, 2022

10. I reserve the right to update my report, appendices, exhibits, and analysis as new information becomes available to me. Ankura is being compensated for my time at \$950 per hour. Staff working under my direction have rates that range from \$375 per hour to \$725 per hour. The fees Ankura incurs in connection with this matter are not contingent upon the outcome.
11. This report contains a complete statement of all my opinions and the basis for them including the methodologies I have applied in reaching my opinions. It also contains a complete list of the data and documents produced in this matter that I have considered in forming my opinions. This report also includes my analysis reflected in exhibits, my qualifications including a list of all my publications in the previous 10 years and a list of all other cases in which I have testified in the previous 4 years, and a statement of my hourly rate and the range of rates for staff working under my direction.

III. QUALIFICATIONS

12. I am a Certified Public Accountant (“CPA”) and an Accredited Senior Appraiser (“ASA”). I am Accredited in Business Valuation (“ABV”), Certified in Entity and Intangible Valuations (“CEIV”), Certified in Valuation of Financial Instruments (“CVFI”), and Certified in Financial Forensics (“CFF”) issued by the American Institute of Certified Public Accountants (“AICPA”). I have been a CPA since 1975, and I am licensed in California, New York, and Pennsylvania.

Expert Report of Gene L. Deetz, April 1, 2022

13. I am currently a Senior Managing Director in the Valuation and Transaction Advisory practice of Ankura Consulting Group, LLC (“Ankura”), where I perform complex damages analyses, accounting analyses, conduct solvency analyses, and perform valuations of business interests, intangible assets, and fixed income securities and related derivatives.
14. For more than ten years a focus of my practice has included performing solvency analyses, and providing expert testimony in United States Bankruptcy Court and other venues on the application of the three recognized solvency tests (balance sheet, adequate capital, and cash flow) as contemplated under the Bankruptcy Code and other fraudulent transfer laws.¹⁷ My work has also included significant forensic accounting analyses related to fraudulent conveyance and related party transactions in solvency and other litigated matters.
15. Before joining Ankura in August 2018, I was a Managing Director at Navigant Consulting. Before that, I was a Principal at Chicago Partners, LLC. Earlier in my career I held senior positions in other consulting and accounting firms including LECG, LLC, Arthur Andersen, Noell Deetz Agnew and Morse LLP, and Stoughton Davidson, starting in 1972.
16. My qualifications are disclosed in more detail in my CV, which is attached as Appendix I.

¹⁷ 11 U.S. Code § 548(a) and the Uniform Voidable Transactions Act.

Expert Report of Gene L. Deetz, April 1, 2022

IV. SUMMARY OF OPINIONS

17. Consolidated GCAC¹⁸ was insolvent at June 30, 2017, at December 31, 2017, and at January 31, 2018 failing all three recognized tests of solvency at each date.

18. Standalone GCAC was insolvent at June 30, 2017, at December 31, 2017, and at January 31, 2018 failing all three recognized tests of solvency at each date.

19. Standalone GCAC's balance sheets from June 30, 2017 through January 31, 2018 contain \$6.6 million of assets identified as Investments/Loans in affiliated companies that have minimal or zero assets, negative book equity, zero revenues, and negative income before tax. These Investments/Loans in affiliated companies have been excluded from the Standalone GCAC solvency analysis as these affiliated companies do not demonstrate any ability to repay amounts reflected on Standalone GCAC's balance sheets.

20. From July 1, 2017 through December 31, 2018 (the last balance sheet produced), GCAC transferred a net \$6.9 million to Arthur and Joyce.¹⁹ The net amounts transferred to Arthur and Joyce were recorded as "Due from Shareholders" assets of GCAC and represented more than 70% of Consolidated GCAC's \$8.9 million of total assets.²⁰ The amounts transferred

¹⁸ Consolidated GCAC and Standalone GCAC defined below.

¹⁹ GCAC is an LLC owned 50% by Arthur through his 100% ownership in Trifinery, and 50% by Joyce. Arthur testified that as president and owner, it is within his sole discretion to make loans.

Q: As far as the decision to make - - make a loan, the timing, frequency, and amount of that loan, that is all in the sole discretion of the president of GCAC, A.J. Brass, correct? A: That's correct. November 3, 2020 Brass Deposition, pages 89:23-90:2.

²⁰ Balance sheets, income statements, or general ledgers of GCAC subsequent to December 31, 2018 were not produced.

Expert Report of Gene L. Deetz, April 1, 2022

to Arthur and Joyce took place during a period that Consolidated GCAC had negative book equity.²¹

V. DETAILED ANALYSIS

A. Accounting for the Vitol/GCAC Transactions

21. The following detailed analysis is based on my review of contemporaneous accounting records produced by both Vitol, GCAC, and EEPB P.C. (“EEPB”). My work does not involve an audit for assurance purposes.
22. In the aggregate from the beginning of the Vitol/GCAC Transactions in July 2017 through the end of the relationship in January 2018, accounting records produced by Vitol indicate that Vitol funded asphalt product inventory purchases and costs for shipping and storage, hedging, and related interest charges totaling \$69.4 million, as shown in the table below.²²

Description of Costs Paid by Vitol	Amount
Rio Beginning Inventory	\$ 13,308,102
Additional Asphalt Product Purchases	45,076,856
Freight, demurrage, inspection costs, and other costs	1,596,219
Storage Costs	2,632,253
Time Value of Money	351,012
Third Party Credit Risk	200,890
Net Cost of Hedging	6,244,480
Subtotal	\$ 69,409,811

23. With regard to the Vitol/GCAC Transactions through January 31, 2018, Vitol received from, or gave credit to, GCAC a total of \$54.6 million (as calculated

²¹ EEPB-00000174, EEPB-00000181 and GCAC 009845.

²² VITOL_80066. Vitol_00084993.

Expert Report of Gene L. Deetz, April 1, 2022

by Vitol and shown in the table below), including cash payments and transfers of inventory.

Description of Payments made by GCAC and Other Transfers	Amount
GCAC payment on 11/17/2017	\$ 4,000,000
GCAC payment on 12/15/2017	3,700,000
GCAC payment on 1/26/2018	8,934,401
Rio Ending Inventory	8,952,522
Rio Lockbox Cash Pass through	4,590,119
3rd Party Sales (excludes GCAC)	24,438,822
Subtotal	<u>\$54,615,864</u>

24. Thus, the net amount outstanding Vitol calculates is due from GCAC as reflected in the tables above is \$14.8 million, calculated as \$69.4 million less \$54.6 million.²³

25. As explained above, the amounts and components of the Vitol/GCAC Transactions were summarized from contemporaneous Vitol schedules. Using GCAC's financial information, and in particular the general ledger, I was able to identify the accounting entries recorded by GCAC relevant to the Vitol/GCAC Transactions demonstrating that GCAC recorded the \$14.8 million amount outstanding as a liability on GCAC's December 31, 2017 balance sheet.²⁴

26. GCAC recorded the Vitol/GCAC Transactions in the following journal entries:

²³ See Vitol_80066. The workbook bates stamped Vitol_00001980 was produced by Vitol (and is the same workbook as the workbook bates stamped Vitol_80066) and sent to Arthur on April 10, 2018 in Vitol_00001979.

²⁴ EEPB-00000174 and GCAC 009845.

Expert Report of Gene L. Deetz, April 1, 2022

Entry #1	Debit	Credit
1330	GCAC Trade Receivables	
3450		Deferred Revenue (Credit)

- a. Entry #1 reflects future cash due to GCAC from a sale that has yet to be delivered (generally known as deferred revenue). This entry has no income statement impact as it affects an asset and liability account by the same amount.²⁵

Entry #2	Debit	Credit
1036	Cash (Sales - Gulf Coast Asphalt)	
1330		GCAC Trade Receivables

- b. Entry #2 was recorded after entry #1 described above, often times within the same month, or the following month if the sale transaction was entered into close to month-end. This entry also has no impact on the income statement as one asset account increases (cash) and another asset account decreases (accounts receivable) for the same amount.

Entry #3	Debit	Credit
3450	Deferred Revenue (Credit)	
5005		Sales Trading & Blending

- c. Entry #3 has the effect of decreasing a liability and increasing revenues. GCAC did not record any revenues from January 2017

²⁵ Under double entry accounting concepts, a debit to an asset account increases an entity's assets and a credit to an asset account decreases an entity's assets. A debit to a liability account decreases an entity's liabilities and a credit to a liability account increases an entity's liabilities. For revenues, a credit increases revenues and a debit decreases revenues. For expenses, a debit increases expenses and a credit decreases expenses.

Expert Report of Gene L. Deetz, April 1, 2022

through November 2017 to the sales account in the income statement, and in December 2017 it adjusted the deferred revenue account to zero.

27. The above description and my analysis of GCAC's accounting for asphalt product sales demonstrates that GCAC was collecting cash from third parties during the periods from July 2017 through November 2017, but not recording revenues during these periods.

28. Importantly, GCAC was not contemporaneously paying for the cost of the asphalt product it was selling. GCAC was purchasing asphalt product inventory on credit and selling this product before paying for the cost of the inventory.

- a. For example, from July 2017 through November 2017, GCAC had collected \$13 million of cash from third party asphalt product sales, and at this point in time, had only paid for \$5.8 million of asphalt product inventory. During this same time period, GCAC made net cash transfers to Arthur and Joyce of \$1.3 million.
- b. *See* Deetz Exhibit 7 for an analysis of GCAC's monthly cash collected from asphalt product sales and cash paid for asphalt product inventory. This Exhibit suggests that had GCAC paid for the asphalt product inventory as it was selling this product, GCAC would have had significant negative cash balances throughout the time period of July 2017 through January 2018.

Expert Report of Gene L. Deetz, April 1, 2022

29. GCAC's accounting for the cost of asphalt product related to Vitol purchases does not begin until September 2017 and is recorded in four entries, described below:

Entry #1	Debit	Credit
2615	Deferred Debit	
3240		Accounts Payable - Operating

a. Entry #1 records an obligation to pay for the asphalt product inventory.

Entry #2	Debit	Credit
3240	Accounts Payable - Operating	
1036		Cash (Sales - Gulf Coast Asphalt)

b. Entry #2 decreases cash and reduces the accounts payable-operating account by the same amount.

Entries #3 & 4	Debit	Credit
6080	Purchase Sweet VTBs	
3245		Accts Pay Contingent Liability
3245	Accts Pay Contingent Liability	
2615		Deferred Debit

c. Entries #3 and #4 occurred in December 31, 2017 and remove the inventory cost from the balance sheet (deferred debit).

30. By December 31, 2017, all inventory product cost related to the Vitol/GCAC Transactions appear to have been recorded by GCAC, in the December 31, 2017 balance sheet and income statement which includes the \$14.8 million liability from GCAC to Vitol. *See* Deetz Exhibit 9 for a comparison of the

Expert Report of Gene L. Deetz, April 1, 2022

contemporaneous amounts calculated by Vitol versus the amounts recorded by GCAC at December 31, 2017.

31. The Vitol/GCAC Transactions occurred from July 2017 through January 2018, and in January of 2018 GCAC had a signed agreement with Mercuria in which Mercuria was to purchase Product (defined in the agreement as asphalt, VTBs, coker feed, and fuel oil) and sell such Product to counterparties as identified by GCAC, among other things.²⁶

32. Vitol attempted to collect the remaining amounts it believed it was owed by GCAC from January 2018²⁷ which ultimately resulted in a judgment ordering Arthur, GCAC, and Trifinery to jointly and severally pay Vitol \$10 million.²⁸

33. Arthur filed a voluntary petition for Chapter 7 bankruptcy on March 26, 2021 (the “Petition Date”).²⁹ GCAC and Trifinery filed for bankruptcy the same date.³⁰

B. GCAC’s Investments/Loan in Other Affiliated Companies

34. I have been provided the records produced by EEPB and understand that EEPB provided tax preparation services to GCAC during at least 2017 and 2018.³¹ In addition to the general ledger produced by GCAC, EEPB produced certain general ledger account details, certain bank statements, certain trial balances,

²⁶ Marketing Agreement by and between Mercuria Energy Trading, Inc. and Gulf Coast Asphalt Company LLC [GCAC000001].

²⁷ See for example, January 25, 2018 email from Vitol to GCAC [VITOL_00002127].

²⁸ November 20, 2020 Agreed and Final Judgment entered for Vitol against the Brass parties [BK-VITOL_0000954].

²⁹ March 26, 2021 Chapter 7, Official Form 101 - Voluntary Petition for Individuals Filing For Bankruptcy, Arthur Jacob Brass.

³⁰ March 26, 2021 Chapter 7, Official Form 201 - Voluntary Petition for Non-Individuals Filing For Bankruptcy, Gulf Coast Asphalt Company, LLC and separately for Trifinery, Inc.

³¹ September 4, 2020 Business Records Affidavit and Schedule A Subpoena [20201021_0000001].

Expert Report of Gene L. Deetz, April 1, 2022

and certain account reconciliations covering the periods from December 31, 2016 through June 30, 2019.

35. EEPB also produced consolidated monthly balance sheets and income statements from January 2017 through June 30, 2017, and annually for December 31, 2017 and annually for December 31, 2018. The entities included in the consolidation include Gulf Coast Asphalt Company, LLC (“Standalone GCAC” or “GCAC”), GCAC Holdings LLC, Gulf Crude Gathering, and AG Bullet (collectively, “Consolidated GCAC”).
36. On March 29, 2022 I interviewed Michael Wagner, CPA and Director at EEPB who confirmed to me that EEPB’s tax preparation services included the preparation of GCAC’s Federal and state income tax returns from the underlying records described above.
37. My interview with Mr. Wagner, combined with my detailed review and analysis of the documents produced by EEPB, GCAC, and Vitol are, based on my education, training, and experience, reasonable and reliable evidence that I considered in forming my opinions.
38. From January 2017 through December 2017, GCAC Holdings LLC, Gulf Crude Gathering, and AG Bullet had minimal or zero assets, negative book equity, zero revenues, negative income before tax, and had intercompany

Expert Report of Gene L. Deetz, April 1, 2022

liabilities to GCAC.³² See Deetz Exhibits 4, 5, and 6 for my analysis of these entities.

- a. In the 2021 GCAC bankruptcy filing, in Part 13 to Official Form 207: Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy, GCAC lists Gulf Coast Crude Gathering and Marketing as other businesses in which the debtor has had an interest. The filing describes this entity as non-operating and that this business existed from 2013 to 2017. The filing does not list any assets or liabilities for this entity.³³

C. GCAC was insolvent at June 30, 2017, at December 31, 2017, and at January 31, 2018.

39. In analyzing solvency, there are three recognized solvency tests, which are the:³⁴

40. Balance Sheet Test: Assesses whether the debtor was insolvent on the date that a challenged transfer was made or challenged obligation was incurred, or became insolvent as a result of such transfer or obligation.

41. Capital Adequacy Test: Assesses whether the debtor was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital.

³² EEPB-00000174, EEPB-00000175.

³³ April 27, 2021 GCAC Official Form 207: Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy.

³⁴ 11 U.S.C. § 548(a)(1)(B)(ii)(I)-(III) – Fraudulent transfers and obligations.

Expert Report of Gene L. Deetz, April 1, 2022

42. Cash Flow Test: Assesses whether the debtor intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

43. Based on the financial information produced to me with respect to GCAC, I have performed all three tests.

i. Balance Sheet Test

44. The balance sheet test considers the debtor's financial condition as a point-in-time assessment (*i.e.*, at a particular balance sheet date), and considers whether the debtor was insolvent under the balance sheet test when a challenged transfer was made, or a challenged obligation was incurred, or became insolvent as a result of such transfer or obligation.

45. The description of the financial condition in Section 548(a)(1)(B)(ii)(I) of the U.S. Bankruptcy Code refers to the term "insolvent." The meaning of "insolvent" is defined elsewhere in Section 101(32)(A) of the U.S. Bankruptcy Code, as follows:³⁵

"(32) The term 'insolvent' means:

(A) with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of —

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and (ii) property that may be exempted from property of the estate under section 522 of this title;"

³⁵ 11 U.S.C. § 101(32)(A) – Definitions.

Expert Report of Gene L. Deetz, April 1, 2022

46. In analyzing whether the sum of GCAC's debts was greater than its assets, at a fair valuation, I analyzed whether the book value of any of GCAC balance sheet assets or liabilities should be adjusted to reflect an estimate of the market value for those assets or liabilities. My analysis begins with GCAC's books and records as described below.
47. GCAC's assets listed on its balance sheets from June 30, 2017 through January 31, 2018 consisted primarily of cash, trade accounts receivable for sales with customers, accounts receivable due from Arthur and Joyce ("Due from Shareholders"), accounts receivable from employees, and investments in or loans to other GCAC affiliated entities (mentioned above as GCAC Holdings LLC, Gulf Crude Gathering, and AG Bullet).
48. The investments in or loans to other GCAC affiliated entities eliminate in Consolidated GCAC's monthly balance sheets from January 31, 2017 through June 30, 2017. The next available consolidated balance sheet is as of December 31, 2017. In this December 31, 2017 consolidated balance sheet, the investments in or loans to other GCAC affiliated entities are presented as assets of standalone GCAC, and as liabilities of these other affiliated entities, which has the same effect as eliminating them from equity.³⁶
49. Further, and as explained above, these other affiliated entities had minimal or zero assets, negative book equity, zero revenues, and negative income before tax.

³⁶ A Consolidated GCAC balance sheet as of January 2018 was not produced. Per EEPB-00000181, "Total Members' Equity" on the December 2018 Consolidated balance sheet was approximately negative \$11.4 million, which did eliminate the investments in or loans to other GCAC affiliated entities.

Expert Report of Gene L. Deetz, April 1, 2022

50. GCAC's liabilities reflected on its balance sheets from June 30, 2017 through January 31, 2018 consisted primarily of accounts payable (including recording the \$14.8 million liability), accrued liabilities, and loans due to shareholders.

51. *See* the table below where I present the actual balance sheets of Consolidated GCAC as of June 30, 2017 and December 31, 2017, which show liabilities significantly greater than assets resulting in negative equity.³⁷

³⁷ EEPB-00000174.

Expert Report of Gene L. Deetz, April 1, 2022

Consolidated GCAC		
	June 2017	December 2017
Cash	\$ (62,132)	\$ 4,623,309
Accounts Receivable Trade	1,239,340	719,229
Accounts Receivable Trade Accrued	246,940	7,855,784
Accounts Receivable Employees	429,915	392,946
Accounts Receivable Trifinery Inc	(54,144)	(54,144)
Accrued Interest Receivable	52,100	-
Due From Shareholders	86,696	2,998,569
Prepaid	7,698	6,995
Total Current Assets	1,946,413	16,542,688
Deposits & Bonds	112,000	32,000
Investments in Arc Terminals	930,726	-
Investments/Loan GCAC Holdings	-	4,183,753
Investment Gulf Coast Crude	-	2,437,087
Investment AJ Bullet	-	39,347
Goodwill	350,000	300,000
Total Other Assets	1,392,726	6,992,187
Total Assets	\$ 3,339,139	\$ 23,534,875
Accounts Payable Trade	3,241,432	1,823,023
Accounts Payable Accrued	957,849	9,634,060
Accounts Payable Contingent Liability	-	14,866,973
Deferred Credit	210,685	-
Prepaid Sales	1,547,409	1,547,409
Total Current Liabilities	5,957,375	27,871,465
Member Shareholder Loan	1,039,332	6,900,187
Total Long Term Debt	1,039,332	6,900,187
Total Liabilities	\$ 6,996,707	\$ 34,771,652
Net Assets (Assets minus Liabilities)	\$ (3,657,568)	\$ (11,236,777)

52. In addition to my analysis of Consolidated GCAC, I analyze the financial statements and general ledger of Standalone GCAC. In the table below I present Standalone GCAC balance sheets as of June 30, 2017, December 31,

Expert Report of Gene L. Deetz, April 1, 2022

2017, and January 31, 2018.³⁸ See also, Deetz Exhibit 1.

	June 2017	December 2017	January 2018
Cash	\$ (82,196)	\$ 4,623,136	\$ 3,581,706
Accounts Receivable Trade	1,233,304	712,898	532,855
Accounts Receivable Trade Accrued	246,940	7,855,784	-
Accounts Receivable Employees	429,915	392,946	385,046
Accounts Receivable Trifinery Inc	(54,144)	(54,144)	(54,144)
Accrued Interest Receivable	52,100	-	-
Due From Shareholders	(712,635)	2,998,569	3,363,569
Prepaid	7,698	6,995	32,289
Total Current Assets	1,120,983	16,536,184	7,841,321
Deposits & Bonds	112,000	32,000	32,000
Investments in Arc Terminals	930,726	-	-
Investments/Loan GCAC Holdings	4,183,753	4,183,753	4,183,753
Investment Gulf Coast Crude	2,430,117	2,437,087	2,437,087
Investment AJ Bullet	37,871	39,347	44,108
Goodwill	350,000	300,000	300,000
Total Other Assets	8,044,467	6,992,187	6,996,947
Total Assets	\$ 9,165,450	\$ 23,528,371	\$ 14,838,268
Accounts Payable Trade	2,990,493	1,479,962	1,288,159
Accounts Payable Accrued	-	8,934,401	30,540
Accounts Payable Contingent Liability	166,619	14,866,973	14,866,973
Deferred Credit	210,685	-	-
Total Current Liabilities	3,367,797	25,281,336	16,185,671
Member Shareholder Loan	240,000	240,000	240,000
Total Long Term Debt	240,000	240,000	240,000
Total Liabilities	\$ 3,607,797	\$ 25,521,336	\$ 16,425,671
Net Assets (Assets minus Liabilities)	\$ 5,557,653	\$ (1,992,965)	\$ (1,587,403)

53. As shown above, before adjustments Standalone GCAC's total assets exceed its total liabilities at June 30, 2017, reflecting book equity of \$5.6 million. Standalone GCAC's as presented book equity contains \$6.6 million as of June 30, 2017, December 31, 2017, and January 31, 2018 for investments in or loans to affiliated entities ("Investments/Loan GCAC Holdings", "Investment Gulf Coast Crude", and "Investment AG Bullet").

³⁸ GCAC009845.

Expert Report of Gene L. Deetz, April 1, 2022

54. As discussed above, from January 2017 through December 2017, GCAC Holdings LLC, Gulf Crude Gathering, and AG Bullet had minimal or zero assets, negative book equity, zero revenues, negative income before tax, and liabilities to Standalone GCAC.³⁹ This is a strong indication that the below GCAC assets of \$6.6 million are not realizable and should be written off Standalone GCAC's balance sheet for assessing its solvency.⁴⁰

	June 2017	December 2017	January 2018
Investments/Loan GCAC Holdings	\$ 4,183,753	\$ 4,183,753	\$ 4,183,753
Investment Gulf Coast Crude	2,430,117	2,437,087	2,437,087
Investment AJ Bullet	37,871	39,347	44,108
Total	\$ 6,651,741	\$ 6,660,187	\$ 6,664,947

55. Adjusting Standalone GCAC's balance sheet net asset amounts for the investments/loan assets, its equity is negative as of June 30, 2017, December 31, 2017, and January 2018.⁴¹ See Deetz Exhibit 1.1 and the summary table below, which represents my base case scenario under the balance sheet test.

	June 2017	December 2017	January 2018
<u>As Reported</u>			
Net Assets (Assets minus Liabilities)	\$ 5,557,653	\$ (1,992,965)	\$ (1,587,403)
<u>Adjustments</u>			
Investments/Loan GCAC Holdings	(4,183,753)	(4,183,753)	(4,183,753)
Investment Gulf Coast Crude	(2,430,117)	(2,437,087)	(2,437,087)
Investment AJ Bullet	(37,871)	(39,347)	(44,108)
Subtotal	\$ (6,651,741)	\$ (6,660,187)	\$ (6,664,947)
<u>Adjusted</u>			
Net Assets (Assets minus Liabilities)	\$ (1,094,088)	\$ (8,653,152)	\$ (8,252,350)

³⁹ EEPB-00000174, EEPB-00000175. I note that in the 2021 GCAC bankruptcy filing, in Part 13 to Official Form 207: Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy, GCAC lists Gulf Coast Crude Gathering and Marketing as other businesses in which the debtor has had an interest. The filing describes this entity as non-operating and that this business existed from 2013 to 2017. The filing does not list any assets or liabilities for this entity [April 27, 2021 GCAC Official Form 207: Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy].

⁴⁰ EEPB-00000174, GCAC009845.

⁴¹ EEPB-00000174, GCAC009845.

Expert Report of Gene L. Deetz, April 1, 2022

56. In addition to my base case, as presented in Deetz Exhibit 1.1, I performed a sensitivity case that makes another adjustment to GCAC's balance sheets to replace the liability recorded by GCAC at December 31, 2017 of \$14.8 million with the November 20, 2020 \$10.0 million Vitol judgment. This adjustment has the effect of increasing GCAC's equity by \$4.8 million.

57. As presented in the table below and at Deetz Exhibit 1.2, adding \$4.8 million to GCAC's equity from the above described adjustment, GCAC is still insolvent at June 30, 2017, December 31, 2017, and January 31, 2018.

	June 2017	December 2017	January 2018
<u>As Reported</u>			
Net Assets (Assets minus Liabilities)	\$ 5,557,653	\$ (1,992,965)	\$ (1,587,403)
<u>Adjustments</u>			
Investments/Loan GCAC Holdings	(4,183,753)	(4,183,753)	(4,183,753)
Investment Gulf Coast Crude	(2,430,117)	(2,437,087)	(2,437,087)
Investment AJ Bullet	(37,871)	(39,347)	(44,108)
Addback - Total Accrued Contingent Liability		14,866,973	14,866,973
Replace with \$10 million Vitol Judgment		(10,000,000)	(10,000,000)
Subtotal	\$ (6,651,741)	\$ (1,793,214)	\$ (1,797,974)
<u>Adjusted</u>			
Net Assets (Assets minus Liabilities)	\$ (1,094,088)	\$ (3,786,179)	\$ (3,385,377)

58. Further, I analyze whether there may be assets or liabilities not reflected in the balance sheets of GCAC that should be considered for solvency purposes.

59. I considered information available in the Arthur, GCAC, and Trifinery bankruptcy filings and the March 25, 2022 Arthur deposition from the perspective of whether or not information related to any potential off-balance sheet assets or liabilities would be known or knowable as of June 30, 2017 through January 31, 2018.

Expert Report of Gene L. Deetz, April 1, 2022

60. Below I provide a brief summary of the assets and liabilities disclosed in the three bankruptcy filings listed above.

61. Arthur's bankruptcy filing lists total assets of \$5.1 million comprised of \$3 million in real estate, \$1.7 million in financial assets (primarily a \$1.6 million certificate of deposit at IBC Bank),⁴² \$351,200 of personal and household items, \$74,200 in vehicles, and \$6,600 in other property.⁴³

- a. Further, Arthur lists various investments in limited partnerships where "Debtor is unaware of the FMV of his interest..." and these assets have "...been pledged as collateral for a debt owed to Veritex Bank."⁴⁴
- b. Also, Arthur lists 3 other limited partnership investments that are described as "minority non-transferrable" and the values were "unknown".⁴⁵
- c. Lastly, Arthur lists a 30% interest in Square 1 Containers, LLC. There is no value information provided and a description of this asset includes: "There are no distributions from this company."⁴⁶

62. Arthur lists \$22.1 million of liabilities in the bankruptcy filing as follows:⁴⁷

⁴² Note that the \$1.5 million certificate of deposit is pledged as collateral for a secured claim by IBC Bank. *See* April 27, 2021 Official Form 106D – Schedule D: Creditors Who Have Claims Secured by Property.

⁴³ December 16, 2021 Amended Schedule B and C, Official Form 106A/B. Note that Arthur claims that \$2 million of the \$3 million value of real estate be exempt, as well as a portion of the value of the vehicles be exempt.

⁴⁴ December 16, 2021 Amended Schedule B and C, Official Form 106A/B.

⁴⁵ December 16, 2021 Amended Schedule B and C, Official Form 106A/B.

⁴⁶ December 16, 2021 Amended Schedule B and C, Official Form 106A/B.

⁴⁷ *See* April 27, 2021 Official Form 106D – Schedule D: Creditors Who Have Claims Secured by Property and Official Form 106E/F: Creditors Who Have Unsecured Claims.

Expert Report of Gene L. Deetz, April 1, 2022

Type of Claim	Entity	Amount
Secured	IBC Bank	\$ 1,549,246
Secured	Wells Fargo	938,703
Unsecured	Veritex Bank	948,000
Unsecured	Internal Revenue Service	7,000,000
Unsecured	Superior Crude Gathering	1,600,000
Unsecured	Vitol	10,000,000
Unsecured	Credit Card and Utilities	74,000
	Subtotal	<u>\$22,109,949</u>

63. With respect to GCAC’s bankruptcy filing, it lists total personal property of \$40,000, primarily related to accounts receivable. It also lists a patent asset for “improving asphalt quality in a refinery.” The value attributable to this patent is listed as “unknown”, and no information is provided as to when the patent was obtained, or how long the patent is active for. Another asset listed with an unknown value is Houston Astros season tickets.⁴⁸

64. GCAC lists unsecured liabilities of \$11.6 million, primarily related to a \$1.6 million claim from Superior Crude and Gathering and a \$10.0 million claim from Vitol.⁴⁹

65. With respect to Trifinery’s bankruptcy filing, the totality of its listed assets is its 50% ownership interest in GCAC, or approximately \$20,000 (\$40,000 x 50%). Trifinery lists liabilities of \$14.0 million, consisting primarily of a \$4.0 million priority claim from the Internal Revenue Service and a \$10 million unsecured claim from Vitol.⁵⁰

⁴⁸ April 27, 2021 GCAC Official Form 206 Schedules.

⁴⁹ April 27, 2021 GCAC Official Form 206 Schedules.

⁵⁰ April 27, 2021 Trifinery Official Form 206 Schedules.

Expert Report of Gene L. Deetz, April 1, 2022

66. Out of the assets and liabilities described above in the bankruptcy filings, there are two items that I considered for solvency purposes.

67. The first is the listed patent for “improving asphalt quality in a refinery”. As explained above, there is no value ascribed or other information about it such as patent number, expiration date, or whether or not there is actually protected technology that has ever been licensed.⁵¹

68. In addition to the lack of any information supporting a value for the patent provided in GCAC’s bankruptcy filing, Arthur testified that he was unsure if the patent was active or had expired during 2017, as well as having no specific recollection that the patent had ever generated any licensing fees for GCAC.⁵²

69. Additionally, I have not seen any licensing fees reflected in the financial statements, trial balances, or general ledger that I have reviewed. Based on my review of the available information regarding the patent explained above, I do not add a patent asset to GCAC’s balance sheets at June 30, 2017, December 31, 2017, or January 31, 2018.

70. The second item I considered from GCAC’s bankruptcy filings is a \$1.6 million unsecured claim by Superior Crude and Gathering resulting from transactions as early as 2014 and 2015, resulting in a judgment.⁵³ To the extent such amounts were known or knowable as of my solvency dates, adding this

⁵¹ April 27, 2021 GCAC Official Form 206 Schedules.

⁵² March 25, 2022 deposition of Arthur Brass at pages 62-65.

⁵³ 2021-7-12 - Brass - Doc 1 - ADVERSARY - 21-06007 - Complaint to determine Dischargeability of a Debt, ¶14. 2021-04-27 - Gulf Coast - Doc 12 - Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy.

Expert Report of Gene L. Deetz, April 1, 2022

\$1.6 million liability to GCAC's reported balance sheets would indicate further insolvency.

71. In my opinion based on the analysis discussed above and as reflected in Deetz Exhibits 1.1. and 1.2, Consolidated GCAC and Standalone GCAC were balance sheet insolvent at June 30, 2017, December 31, 2017, and January 2018.

ii. Capital Adequacy Test

72. The capital adequacy test is a determination of whether a debtor has sufficient capital to have a reasonable prospect of avoiding bankruptcy through the normal ebbs and flows of economic cycles.⁵⁴ In other words, the capital adequacy test measures whether a debtor has a sufficient cushion in its cash flow estimates, working capital, equity capital, and access to capital.⁵⁵

73. My analysis of GCAC's capital adequacy considers GCAC's available historical income statements (during the period preceding Vitol – the Rio JMA period), GCAC's income statements from June 30, 2017 through January 31, 2018 (the period of the Vitol/GCAC Transactions), GCAC's working capital from June 30, 2017 through January 31, 2018, GCAC's equity capital from June 30, 2017 through January 31, 2018, and GCAC's access to lines of credit or other available sources of financing.

⁵⁴ AICPA & CIMA. 2020. Forensic & Valuation Services Practice Aid. Providing Bankruptcy and Reorganization Services, Vol. 2 – Valuation in Bankruptcy. p. 99.

⁵⁵ AICPA & CIMA. 2020. Forensic & Valuation Services Practice Aid. Providing Bankruptcy and Reorganization Services, Vol. 2 – Valuation in Bankruptcy. p. 99.

Expert Report of Gene L. Deetz, April 1, 2022

74. From January 1 through December 31, 2016 GCAC lost \$2.2 million.⁵⁶ From January 1 through June 30, 2017 GCAC lost \$3.0 million.⁵⁷ During 2016 and through June 2017, GCAC was in a joint venture contract with Rio.⁵⁸

Summary - GCAC Income Statement	Twelve months ended 12/31/2016	Six months ended 6/30/2017	Cumulative Loss
Revenues	\$ 11,585,575	\$ 2,865,768	
Cost of Sales	9,891,776	3,099,686	
Gross Profit	1,693,799	(233,918)	
Operating Expenses	2,066,011	1,158,399	
General & Administrative Expenses	2,058,541	1,655,876	
Other Income (Expense)	192,598	-	
Standalone - Loss Before Taxes	\$ (2,238,154)	\$ (3,048,193)	\$ (5,286,348)
Consolidated- Loss Before Taxes	\$ (2,924,052)	\$ (3,313,517)	\$ (6,237,569)

75. The \$5.2 million of losses over this 18-month period was coupled with an overdrawn cash balance at June 30, 2017 of negative (\$82,196).⁵⁹ GCAC continued to lose another \$7.1 million from July 1, 2017 through January 31, 2018 as presented in Deetz Exhibit 2.

76. Also presented in Deetz Exhibit 2 is the impact on GCAC's income statement of adjusting GCAC's balance sheet to replace the \$14.8 million liability with the \$10 million Vitol judgment. The results of this adjustment show that

⁵⁶ 20201021_0000025. Consolidated GCAC had a loss of \$2.9 million for the twelve months ended December 31, 2016 comprised of a \$2.2 million loss generated at Standalone GCAC and a \$0.7 million loss in the other affiliated entities.

⁵⁷ EEPB-00000175, GCAC009845. Consolidated GCAC had a loss of \$3.3 million from January 2017 to June 2017 comprised of \$3.0 million loss generated at Standalone GCAC and a \$0.3 million loss in the other affiliated entities. *See* also Deetz Exhibits 2, 5, and 6.

⁵⁸ Joint Marketing Agreement by and between Rio Energy International, Inc. and Gulf Coast Asphalt Company, LLC [VITOL_0078947 and VITOL_00078949].

⁵⁹ GCAC009845.

Expert Report of Gene L. Deetz, April 1, 2022

GCAC would still incur \$2.3 million of losses from July 1, 2017 through January 31, 2018.

77. Demonstrated in the table below and at Deetz Exhibit 8, GCAC also had current liabilities in excess of current assets, reflecting negative working capital.⁶⁰

	June 2017	December 2017	January 2018
Cash	\$ (82,196)	\$ 4,623,136	\$ 3,581,706
Accounts Receivable Trade	1,233,304	712,898	532,855
Accounts Receivable Trade Accrued	246,940	7,855,784	-
Accounts Receivable Employees	429,915	392,946	385,046
Accounts Receivable Trifinery Inc	(54,144)	(54,144)	(54,144)
Accrued Interest Receivable	52,100	-	-
Due From Shareholders	(712,635)	2,998,569	3,363,569
Prepaid	7,698	6,995	32,289
Total Current Assets	1,120,983	16,536,184	7,841,321
Accounts Payable Trade	2,990,493	1,479,962	1,288,159
Accounts Payable Accrued	-	8,934,401	30,540
Accounts Payable Contingent Liability	166,619	14,866,973	14,866,973
Deferred Credit	210,685	-	-
Total Current Liabilities	3,367,797	25,281,336	16,185,671
Current Assets Less Current Liabilities	\$ (2,246,814)	\$ (8,745,152)	\$ (8,344,350)

78. As shown in the table above, even including cash,⁶¹ GCAC operated with negative working capital indicating that GCAC used credit from Vitol as a source of capital. During the same time period, GCAC transferred over \$4 million to Arthur and Joyce.⁶²

⁶⁰ EEPB-00000174, GCAC009845.

⁶¹ Generally net working capital does not include cash.

⁶² See Deetz Exhibit 1.1.

Expert Report of Gene L. Deetz, April 1, 2022

79. Even replacing the \$14.8 million liability reflected above with the \$10 million Vitol Judgment (and leaving the “Due from Shareholders” assets from Arthur and Joyce intact), GCAC’s current liabilities would exceed its current assets.

80. Consolidated GCAC’s and Standalone GCAC’s adjusted financial statements reflect an entity in financial distress, negative equity, loss making, and with negative working capital at June 30, 2017, December 31, 2017, and at January 31, 2018. In my opinion and based on my analysis, Consolidated GCAC and Standalone GCAC fail the capital adequacy test at June 30, 2017, December 31, 2017, and January 31, 2018.

iii. Cash Flow Test

81. The cash flow test considers whether or not the debtor intended to incur, or believed that it would incur, debts that would be beyond its ability to pay as such debts matured. A debtor’s ability to pay its debts as they come due is based on its available expected cash flows to the firm.⁶³

82. As explained above, GCAC historically had losses from January 1, 2016 through June 30, 2017 in the amount of \$5.2 million. As presented below and in Deetz Exhibit 2, GCAC continued to accumulate losses from July 1, 2017 through January 31, 2018.

⁶³ AICPA & CIMA. 2020. Forensic & Valuation Services Practice Aid. Providing Bankruptcy and Reorganization Services, Vol. 2 – Valuation in Bankruptcy. pp. 97-98.

Expert Report of Gene L. Deetz, April 1, 2022

July 1, 2017 through January 31, 2018	
As prepared - Cumulative Loss before taxes	\$ (7,145,056)
Deetz Exhibit 1.2 - Sensitivity Adjustment	4,866,973
Adjusted - Cumulative Loss before taxes	\$ (2,278,083)

83. In aggregate from January 1, 2016 through January 31, 2018, GCAC lost \$12.4 million on a standalone basis and \$13.8 million on a consolidated basis from January 1, 2016 through December 31, 2017.⁶⁴

Summary - GCAC Income Statement	Twelve months ended 12/31/2016	Six months ended 6/30/2017	Seven months ended 1/31/2018	Cumulative Loss
Revenues	\$ 11,585,575	\$ 2,865,768	\$ 41,880,128	
Cost of Sales	9,891,776	3,099,686	42,251,221	
Gross Profit	1,693,799	(233,918)	(371,094)	
Operating Expenses	2,066,011	1,158,399	3,926,326	
General & Administrative Expenses	2,058,541	1,655,876	2,847,636	
Other Income (Expense)	192,598	-	-	
Standalone Loss Before Taxes	\$ (2,238,154)	\$ (3,048,193)	\$ (7,145,056)	\$ (12,431,404)
	Twelve months ended 12/31/2016	Six months ended 6/30/2017	Six months ended 12/31/2017	Cumulative Loss
Consolidated Loss Before Taxes	\$ (2,924,052)	\$ (3,313,517)	\$ (7,579,249)	\$ (13,816,818)

84. From July 1, 2017 through January 31, 2018, GCAC increasingly financed its operations through credit provided to it by Vitol, and its net working capital position correspondingly deteriorated as reflected in the table above. In other words, GCAC collected cash from asphalt sales in advance of paying Vitol for the asphalt products it sold. During the same period GCAC consistently made cash transfers to Arthur and Joyce.

⁶⁴ 20201021_0000025, EEPB-00000175, GCAC009845. See also Deetz Exhibits 5 and 6.

Expert Report of Gene L. Deetz, April 1, 2022

85. Consolidated GCAC's and Standalone GCAC's adjusted financial statements reflect entities in financial distress, negative equity, loss making, and with negative working capital at June 30, 2017, December 31, 2017, and at January 31, 2018. Additionally, these companies have not demonstrated any other source of cash flow available to them to continue to pay their debts as they became due. In my opinion and based on my analysis, both Consolidated GCAC and Standalone GCAC fail the cash flow test at June 30, 2017, December 31, 2017, and January 31, 2018.

D. Transfers to Insiders

86. I have analyzed GCAC's "Due from Shareholders" (transfers to insiders) accounts to Arthur (GCAC general ledger account 1250) and Joyce (GCAC general ledger account 1270) from January 2015 through June 2019,⁶⁵ and note that during the six month period from July 1, 2017 through December 31, 2017, GCAC made cash transfers to Arthur and Joyce that were more than triple the average amount transferred to them in the preceding periods.⁶⁶

87. Through June 30, 2017 (the month-end prior to the first Vitol/GCAC Transaction), Joyce had an outstanding loan balance of approximately \$86,000, and 100% of the "Due from Shareholders" account for Arthur had been fully repaid by June 30, 2017, and reflected approximately \$800,000 payable to Arthur.⁶⁷

⁶⁵ This time period is the full period with which financial information was produced related to GCAC transfers recorded as "Due from Shareholders" to Arthur and Joyce.

⁶⁶ Deetz Exhibit 3.

⁶⁷ EEPB-00000174, GCAC009845, GCAC009511.

Expert Report of Gene L. Deetz, April 1, 2022

88. For the period July 1, 2017 through December 31, 2017, a total of \$3.8 million in cash transfers were made to Arthur and Joyce. This 6-month period of cash transfer activity is more than 3 times the average 6-month transfer activity to them from January 1, 2015 through June 30, 2017 of \$1 million (and more than double the next highest previous 6-month period of activity from January 1, 2015 through June 30, 2015 of \$1.7 million).⁶⁸
89. Subsequent to December 31, 2017, an additional \$4.9 million in transfers were made to Arthur and Joyce from January 1, 2018 through June 30, 2019.⁶⁹
90. With respect to repayments, the level of repayments from Arthur and Joyce during the 6-month period ending December 31, 2017 was significantly less from Arthur and Joyce (on average nearly 90% less) than the prior 6-months periods from January 2015 through June 2017.⁷⁰
91. The table below summarizes my analysis of the Arthur and Joyce “Due from Shareholders” accounts in GCAC’s accounting records as described above.⁷¹

⁶⁸ EEPB-00000174, GCAC009845, GCAC009511.

⁶⁹ EEPB-00000174, GCAC009845, GCAC009511.

⁷⁰ EEPB-00000174, GCAC009845, GCAC009511.

⁷¹ EEPB-00000174, GCAC009845, GCAC009511. *See also* Deetz Exhibit 3.

Expert Report of Gene L. Deetz, April 1, 2022

<i>Amounts in USD dollars</i>						7/1/17-12/31/17 Period compared to historical high and average	
Due from Shareholders - Arthur + Joyce						Total Amount Transferred	Total Amount Repaid
Year	Activity Period	Total Amount Transferred	Total Amount Repaid		Balance		
2015	1/1-6/30	\$ 1,771,802	\$ (150,000)		\$ 1,621,802		
2015	7/1-12/31	1,000,000	(549,160)		2,072,642		
2016	1/1-6/30	1,462,648	(1,330,000)		2,205,290		
2016	7/1-12/31	166,000	(952,000)		1,419,290		
2017	1/1-6/30	836,975	(2,968,900)		(712,635)		
Total		\$ 5,237,425	\$ (5,950,060)				
Average per period		\$ 1,047,485	\$ (1,190,012)				
2017	7/1-12/31	\$ 3,851,322	\$ (140,118)		\$ 2,998,569	+217%/+368%	-88%
2018	1/1-6/30	\$ 2,281,769	\$ -		\$ 5,280,338		
2018	7/1-12/31	1,246,000	(280,000)		6,246,338		
2019	1/1-6/30	1,431,552	(350,000)		7,327,889		
Total		\$ 4,959,320	\$ (630,000)				
Average per period		\$ 1,653,107	\$ (210,000)				
Total	1/1/15-6/30/19	\$ 14,048,067	\$ (6,720,178)		\$ 7,327,889		

92. Arthur testified that GCAC had a long history of making loans to himself and the loans would be repaid,⁷² consistent with the information shown in the table above through June 2017.

93. Arthur also testified that as president and owner, it is within his sole discretion to make loans.⁷³

“Q: As far as the decision to make - - make a loan, the timing, frequency, and amount of that loan, that is all in the sole discretion of the president of GCAC, A.J. Brass, correct?”

A: That’s correct.”

94. I have seen no analysis, documentation, or any support providing the business purpose or the terms of repayment for the transfers to Arthur and Joyce

⁷² See for example, November 3, 2020 Brass Deposition, page 88:5-9.

⁷³ November 3, 2020 Brass Deposition, pages 89:23-90:2.

Expert Report of Gene L. Deetz, April 1, 2022

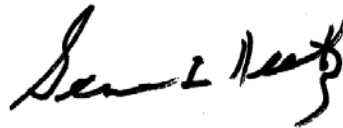
recorded as “Due from Shareholders” during this time period or why the aggregate balance to Arthur and Joyce was allowed to increase to over \$7 million by June 30, 2019 without any documentation memorializing the terms of and security for repayment.

95. As demonstrated above, GCAC, in my opinion, was insolvent at June 30, 2017, December 31, 2017, and January 31, 2018. During this period, GCAC was selling asphalt product that it had not fully paid for, while it was also making cash transfers to insiders (Arthur and Joyce) during this same period.

96. From July 1, 2017 through December 31, 2018 (the last balance sheet produced), GCAC transferred a net \$6.9 million to Arthur and Joyce. This substantial amount was recorded as a “Due from Shareholders” asset of GCAC and represented over 70% of Consolidated GCAC’s total assets of \$8.9 million. For the twelve months ended December 31, 2018 an additional \$3.2 million of GCAC’s assets continued to be transferred to insiders (Arthur and Joyce).

Expert Report of Gene L. Deetz, April 1, 2022

Submitted on April 1, 2022 by:

A handwritten signature in black ink, appearing to read "Gene L. Deetz". The signature is written in a cursive, flowing style with a large initial 'G' and a stylized 'D'.

Gene L. Deetz



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New York State Society of
 Certified Public Accountants

Gene L. Deetz is a Senior Managing Director at Ankura, based in New York. Gene conducts complex damage analysis and valuations of business interests, intangible assets, private equities, and fixed income securities and related derivatives. His valuation work includes valuation and solvency analysis for litigation in U.S. Federal and state courts as well as London in the High Court of Justice, Chancery Division and the London Center for International Arbitration. Additionally, Gene's current engagements also include complex tax disputes, solvency opinions, and the application of US GAAP and IFRS.

Gene is an experienced, well credentialed valuation and damages expert. For over twenty years Gene has provided expert valuations and damages analysis to companies in the energy industry including diversified energy producers, and in the oil and gas industry.

For the last ten plus years Gene's solvency work has addressed fraudulent conveyance matters, preferences, and non-arms length insider transactions.

Gene also specializes in cross-border tax reporting investigations, tax controversy, accounting standards, claims, and dispute matters, including material adverse change litigation and post-acquisition purchase price disputes. This work also includes significant experience in product-level cost accounting and cost allocations covering several industries. Gene's expert witness testimony relates to commercial, regulatory, and tax controversy matters.

Gene's work on post-acquisition disputes matters includes, among others, the application of U.S. GAAP and IFRS including accounting for business combinations, calculation of working capital and its components, evaluation of domestic and foreign tax obligations, evaluation of contingent liabilities, and the evaluation of deal metrics including earnings before interest, taxes, depreciation and amortization (EBITDA), revenue, and gross profit.

Gene's professional experience also includes:

- Valuation, and Damage Analysis in Post-Acquisition Disputes including Material Adverse Change Cases: Provided analysis and testimony regarding the application of US GAAP and related valuation standards in financial analysis, valuation, and damage analysis.
- Complex Federal Income Tax Litigation: Provided analysis of tax regulations and damage calculations.
- Solvency, Fraudulent Conveyance and Ability-to-Pay analysis: Provided analysis and testimony regarding valuation and damage analysis.
- Damage analysis and cost to complete allocations related to a joint venture partner dispute regarding completion of middle-eastern sovereign infrastructure projects.
- Regulatory Investigation: Provided services regarding the application of US GAAP, IFRS, including ASC 820 and IFRS 13.
- Shareholder Litigation in Mergers and Acquisitions: Provided analysis and testimony regarding the application of IFRS including valuation standards in shareholder litigation of large financial services institutions.
- Independent examiner of Swiss private bank reporting to the DOJ regarding cross-border tax matters under the DOJ / Swiss "Program".
- Analysis of fair value accounting and related disclosure standards including compliance with US GAAP and IFRS. Evaluation of techniques and assumptions used by market participants including model calibration and related inputs.
- Provided expert and consulting valuation and forensic accounting services to the oil and gas industry including working with some of the world's largest oil and gas companies and joint venture exploration companies.
- Valuation and alleged damages of intellectual property contributed to an acquired subsidiary.
- Complex securities valuation and derivative close-out issues.
- Valuation and accounting for structured financial products with underlying residential real estate collateral, analysis of held for sale vs. held for investment considerations, and analysis of amount and timing of loan loss reserve allowances.
- Valuation regarding investments in CLNs and CDOs.
- Valuation of mortgage-related securities including CDOs and RMBS.
- Financial accounting and valuation of private equities and sovereign debt instruments.

- Analysis of ISDA swap valuation considering market disruption and exercise conditions.
- Analysis of asset-backed commercial paper conduit, including mortgage-backed securities and collateralized debt obligations with subprime assets. Analysis of structure, portfolio selection, and portfolio performance.
- Valuation and accounting for fixed income assets and liabilities, derivatives, and mortgage-backed securities including advances, whole loans, and subprime assets.
- Analysis of supply contract including its market, forward markets, and derivatives.
- Brand value and purchase price allocation upon sale of brand.
- Analysis of damage allegations concerning accounting fraud impact on business acquisition.

Deposition and / or Trial Testimony

- American Fidelity Assurance Company v. The Bank of New York Mellon, United States District Court, Western District of Oklahoma. Case No. CIV-11-1284-D.
- John Michael Sharp (and the other Claimants detailed in the GLO Register) v. Sir Michael Victor Blank, John Eric Daniels, Timothy Tookey, Helen Weir, George Truett Tate, and Lloyds Banking Group PLC, The Hight Court of Justice, Chancery Division, London UK. Case Nos: HC-2014-000292, HC-2014-001010, HC-2014-001387, HC-2014-001388, HC-2014-001389, HC-2015-000103, HC-2015-000105.
- Emerald Casino, Inc. and Frances Gecker, as Trustee for Emerald Casino, Inc. v. Estate of Kevin F. Flynn, et al., United States District Court, Northern District of Illinois, Eastern Division. Dist. Ct. No. 11-cv-04714.
- JAMS Ref. No. 1425028944 BEFORE Hon. Garrett E. Brown, Jr., Hon. David H. Coar, and Hon. Thomas I. Vanaskie
- Seaport Global Securities v. SB Group HoldCo, DG Capital Management, et al. Supreme Court of the State of New York, County of New York. Index No. 655723/2017.
- Stone Panels, Inc. and Stone Panels Holding Corp., Debtors, Robert Yaquinto Chapter 7 Trustee, Plaintiff, v. The Privatebank and Trust Company, et. al, Defendants, United States Bankruptcy Court for the Northern District of Texas Dallas Division. Deposition and Trial Testimony.
- Michael Molnar and Kyle Jones Baker v. GreenTech Capital Advisors L.P., et al. Supreme Court of the State of New York, County of New York. Index No. 650242(3)/2022.

GENE L. DEETZ**Work History**

Senior Managing Director, Ankura Consulting Group, LLC	2018 – Present
Managing Director, Navigant Consulting, Inc.	2008 – 2018
Principal, Chicago Partners, LLC	2006 – 2008
Director, LECG, LLC	2002 – 2006
Managing Director, Arthur Andersen	2001 – 2002
Partner, Noell Deetz Agnew & Morse LLP	1998 – 2001
Partner, Stoughton Davidson	1972 – 1998

Publications

Bloomberg News. "Navigant's Deetz Expects ECB Will Act if Crisis Worsens." Online video clip. YouTube. YouTube, December 19, 2011.

Navigant Consulting, Inc. "Cornelia Meyers Joins the Navigant/OMFIF Program: 'The ECB and Its Balance Sheet' [Press Release]." March 20, 2012.

Deetz, G. "A plea for more transparency: Accounting analysis applied to central banking." OMFIF Bulletin. May 2012.

Deetz, G., Malik, P., and Gendler, H. "Eurozone Crisis: In-Country Bank Analysis – July 2012." Navigant Consulting, Inc. July 23, 2012.

Deetz, G., Malik, P., and Gendler, H. "Navigant's EU/Eurozone Analysis – July 2012: Key Economic Statistics and Commentary Regarding the European Union, Its Member States and the World's Major Economies." Navigant Consulting, Inc. September 13, 2012. (Navigant's EU/Eurozone Analysis – August and November 2012)

Deetz, G. and Taylor, T. "Eurozone Crisis: Litigation, Restructuring and Risk Mitigation." The Commercial Bar Association: Professional Education Programme 2012. International Dispute Resolution Center, London, UK. October, 25, 2012. Lecture.

Deetz, G., Bajaj, M., Godellas, B., and Lipper, H. "The Valuation Minefield: Independence, Accuracy and Litigation." Fund Governance Summit: Regulatory Enforcement, Dispute Resolution and Asset Recovery. Executive Conference Center, New York, NY. October, 2, 2013. Panel Discussion.

Deetz, G. and Kennelly, M. "Business Valuations, Fundamentals and Complex Issue Litigation Matters." September 2014.

Deetz, G., V. Kapoor, and Kennelly, M. "Assessing the Impact of COVID-19 in Liquidity and Solvency Matters." May 2020.

Deetz, G., V. Kapoor, and Kennelly, M. "Managing Through the Liquidity and Solvency Crises Resulting from the COVID-19 Pandemic." May 2020.

Deetz, G., Kennelly, M., St. Martin, M., and Rollins, J. "Assessing the Impact of COVID-19 in Complex Disputes and Restructurings." May 2020.

Expert Report of Gene L. Deetz April 1, 2022

Appendix II - Documents Considered

File Name	Document Description
Documents Produced by EEPB under September 4, 2020 Business Records Affidavit Subpoena	
20201021_0000001	Business Records Affidavit dated September 4, 2020
20201021_0000002	GCAC Holdings LLC Account Reconciliation as of December 31, 2016 for account 1001 - Cash Iberia Operating
20201021_0000003	Iberia Bank statement for GCAC Holdings LLC operating account dated December 30, 2016
20201021_0000004	GCAC Holdings LLC Account Reconciliation as of December 31, 2016 for account 1002 - Cash Iberia Payroll
20201021_0000005	Iberia Bank statement for GCAC Holdings LLC payroll account dated December 30, 2016
20201021_0000006	GCAC Account Reconciliation as of December 31, 2016 for account 1006 - Rentals - Gulf Coast Asphalt
20201021_0000007	Iberia Bank statement for GCAC lockbox account dated December 30, 2016
20201021_0000008	GCAC Account Reconciliation as of December 31, 2016 for account 1021 - Operating - Gulf Coast Asphalt
20201021_0000009	Iberia Bank statement for GCAC operating account dated December 30, 2016
20201021_0000010	GCAC Account Reconciliation as of December 31, 2016 for account 1030 - Payroll - Gulf Coast Asphalt
20201021_0000011	Iberia Bank statement for GCAC payroll account dated December 30, 2016
20201021_0000012	GCAC Account Reconciliation as of December 31, 2016 for account 1036 - Sales - Gulf Coast Asphalt
20201021_0000013	Iberia Bank statement for GCAC asphalt sales account dated December 30, 2016
20201021_0000014	GCAC Account Reconciliation as of December 31, 2016 for account 1040 - MoneyMkt - Gulf Coast Asphalt
20201021_0000015	Iberia Bank statement for GCAC account ending 5516 dated December 30, 2016
20201021_0000016	Gulf Coast Crude Gathering & Marketing Account Reconciliation as of December 31, 2016 for account 1044 - GulfCoastCrudeGathering Oper
20201021_0000017	Iberia Bank statement for Gulf Coast Crude Gathering & Marketing operating account dated December 30, 2016
20201021_0000018	AG Bullet, LLC Account Reconciliation as of December 31, 2016 for account 1055 - Cash Operating
20201021_0000019	Iberia Bank statement for AG Bullet LLC operating account dated December 30, 2016
20201021_0000020	General ledger detail for account 1360 - Accrued Interest for the year 2016
20201021_0000021	General ledger detail for account 3245 - Accounts Payable Accrued for the year 2016
20201021_0000022	General ledger detail for account 1255 - Accounts Receivable Employee for the year 2016
20201021_0000023	Aged receivables schedule - 2017
20201021_0000024	Aged payables schedule - 2017
20201021_0000025	GCAC consolidated trial balance as of December 31, 2016
20201021_0000026	General ledger detail for account 2600 - Deposits & Bonds for the year 2016
20201021_0000027	General ledger detail for account 9160 - Donations for the year 2016
20201021_0000028	General ledger detail for account 1250 - Loan-A.J. Brass for the year 2016
20201021_0000029	General ledger detail for account 1270 - Loan Joyce Brass for the year 2016
20201021_0000030	General ledger detail for account 1100 - Due from Trifinery for the year 2016
20201021_0000031	General ledger detail for account 9170 - Dues & Subscriptions for the year 2016
20201021_0000032	General ledger detail for account 9170 - Dues & Subscriptions for the year 2016

Expert Report of Gene L. Deetz April 1, 2022

Appendix II - Documents Considered

File Name	Document Description
20201021_0000033	General ledger detail for Property, Plant & Equipment accounts for the year 2016
20201021_0000034	General ledger detail for account 2630 - Goodwill for the year 2016
20201021_0000035	General ledger detail for account 2611 - Investment in Arc Terminal for the year 2016
20201021_0000036	General ledger detail for account 2613 - Investment in GCAC Holdings for the year 2016
20201021_0000037	General ledger detail for account 9660 - Miscellaneous Income for the year 2016
20201021_0000038	General ledger detail for account 9340 - Taxes-Other for the year 2016
20201021_0000039	General ledger detail for account 9340 - Taxes-Other for the year 2016
20201021_0000040	General ledger detail for account 9305 - Outside Services for the year 2016
20201021_0000041	General ledger detail for account 1410 - Prepaid for the year 2016
20201021_0000042	General ledger detail for account 9710 - Prior Year Adjustment for the year 2016
20201021_0000043	General ledger detail for account 3613 - Member Shareholder Loan for the year 2016
20201021_0000044	General ledger detail for account 2618 - Investment in AG Bullet for the year 2016
20201021_0000045	General ledger detail for account 2617 - Investment in Gulf Coast Crude for the year 2016
20201021_0000046	Iberia Bank statement for Trifinery, Inc. account ending 8301 dated December 30, 2016
20201021_0000047	GCAC depreciation and sale of property tax schedules, 2016
20201021_0000048	GCAC Arc Logistics Partners K-1, 2016
20201021_0000049	General ledger detail for account 3245 - Accounts Payable-Accrued for the year 2017
20201021_0000050	General ledger detail for account 3245 - Accts Payable Contingent Liab for the year 2017
20201021_0000051	General ledger detail for account 3250 - Accounts Payable-Product for the year 2017
20201021_0000052	GCAC consolidated trial balance as of December 31, 2017
20201021_0000053	General ledger detail for account 9160 - Donations for the year 2017
20201021_0000054	General ledger detail for account 9170 - Dues & Subscriptions for the year 2017
20201021_0000055	General ledger detail for account 9340 - Taxes-Other for the year 2017
20201021_0000056	General ledger detail for account 1335 - Accrued A/R GCAC for the year 2017
20201021_0000057	General ledger detail for account 3250 - Accounts Payable-Product for the year 2017
20201021_0000058	General ledger detail for account 1255 - Accounts Receivable Employee for the year 2017
20201021_0000059	A/R aging schedule - 2018
20201021_0000060	General ledger detail for account 1250 - Loan-A.J. Brass for the year 2017
20201021_0000061	GCAC Arc Logistics Partners K-1, 2017
20201021_0000062	Email correspondence between EEPB and GCAC regarding tax issues dated July 2018
20201021_0000063	BLANK
20201021_0000064	BLANK
20201021_0000065	Iberia Bank statement for GCAC account ending 8681 dated December 29, 2017
20201021_0000066	Iberia Bank statement for GCAC account ending 8630 dated December 29, 2017
20201021_0000067	Iberia Bank statement for GCAC account ending 8665 dated December 29, 2017
20201021_0000068	GCAC tax schedule
20201021_0000069	GCAC tax schedule of GCAC basis in Arc Logistics Partners

Expert Report of Gene L. Deetz April 1, 2022

Appendix II - Documents Considered

File Name	Document Description
20201021_0000070	GCAC consolidated trial balance as of December 31, 2017
20201021_0000071	Email correspondence between EEPB and GCAC regarding tax issues dated July 2018
20201021_0000072	BLANK
20201021_0000073	BLANK
20201021_0000074	Email correspondence between EEPB, Popper & Company, LLP and GCAC regarding tax issues dated August-September 2018
20201021_0000075	BLANK
20201021_0000076	Iberia Bank statement for GCAC account ending 8673 dated December 29, 2017
20201021_0000077	General ledger detail for account 1270 - Loan Joyce Brass for the year 2017
20201021_0000078	General ledger detail for accounts 1250 - Loan-A.J. Brass and 1270 - Loan Joyce Brass for the year 2017
20201021_0000079	Gulf Coast Asphalt Company Consolidated Monthly Balance Sheets for periods January - June 2017 and December 2017
20201021_0000080	Gulf Coast Asphalt Company Consolidated Monthly Income Statements for periods January - June 2017 and December 2017
20201021_0000081	GCAC prepaid insurance schedule, 2017
20201021_0000082	General ledger detail for account 3260 - AP-Adjustments for the year 2018
20201021_0000083	General ledger detail for account 1335 - Accrued A/R GCAC for the year 2018
20201021_0000084	Aged payables schedule - 2019
20201021_0000085	Aged receivables schedule - 2019
20201021_0000086	Gulf Coast Asphalt Company Consolidated Balance Sheet as of December 31, 2018
20201021_0000087	GCAC consolidated trial balance as of December 31, 2018
20201021_0000088	General ledger detail for account 2600 - Deposits & Bonds for the year 2018
20201021_0000089	General ledger detail for account 9160 - Donations for the year 2018
20201021_0000090	General ledger detail for account 1250 - Loan-A.J. Brass for the year 2018
20201021_0000091	General ledger detail for account 1270 - Loan Joyce Brass for the year 2018
20201021_0000092	General ledger detail for account 1100 - Due from Trifinery for the year 2018
20201021_0000093	General ledger detail for account 9170 - Dues & Subscriptions for the year 2018
20201021_0000094	General ledger detail for account 1255 - Accounts Receivable Employee for the year 2018
20201021_0000095	Gulf Coast Asphalt Company Consolidated Income Statement for 2018
20201021_0000096	Prepaid insurance schedule, 2018
20201021_0000097	General ledger detail for account 1410 - Prepaid for the year 2018
20201021_0000098	Net revenues schedule
20201021_0000099	General ledger detail for account 3260 - AP-Adjustments for the year 2018
20201021_0000100	A/R aging schedules - 2019
20201021_0000101	General ledger detail for account 1335 - Accrued A/R GCAC for the year 2018
20201021_0000102	General ledger detail for account 3260 - AP-Adjustments for the year 2018
20201021_0000103	A/P operating aging schedule - 2019
20201021_0000104	General ledger detail for account 1255 - Accounts Receivable Employee for the year 2018
20201021_0000105	Iberia Bank statement for GCAC account ending 8665 dated December 31, 2018
20201021_0000106	General ledger detail for account 2600 - Deposits & Bonds for the year 2018

Expert Report of Gene L. Deetz April 1, 2022
Appendix II - Documents Considered

File Name	Document Description
20201021_0000107	General ledger detail for account 1100 - Due from Trifinery for the year 2018
20201021_0000108	Net revenues schedule
20201021_0000109	Iberia Bank statement for GCAC account ending 8673 dated December 31, 2018
20201021_0000110	Iberia Bank statement for GCAC account ending 8681 dated December 31, 2018
20201021_0000111	Iberia Bank statement for GCAC account ending 8630 dated December 31, 2018
20201021_0000112	Iberia Bank statement for GCAC account ending 8665 dated December 31, 2018
20201021_0000113	General ledger detail for account 1250 - Loan-A.J. Brass for the year 2018
20201021_0000114	General ledger detail for account 1270 - Loan Joyce Brass for the year 2018
20201021_0000115	General ledger detail for accounts 1100 - Due from Trifinery, 1250 - Loan-A.J. Brass and 1270 - Loan Joyce Brass for the year 2018
20201021_0000116	Iberia Bank statement for GCAC account ending 8673 dated December 31, 2018
20201021_0000117	Prepaid insurance schedule, 2018
20201021_0000118	General ledger detail for account 1410 - Prepaid for the year 2018
20201021_0000119	Trade receivables aging schedule - 2019
EEPB-00000173	General ledger detail for account 1270 - Loan Joyce Brass for the year 2017
EEPB-00000174	Gulf Coast Asphalt Company Consolidated Monthly Balance Sheets for periods January - June 2017 and December 2017
EEPB-00000175	Gulf Coast Asphalt Company Consolidated Monthly Income Statements for periods January - June 2017 and December 2017
EEPB-00000181	Gulf Coast Asphalt Company Consolidated Balance Sheet as of December 31, 2018
EEPB-00000190	Gulf Coast Asphalt Company Consolidated Income Statement for 2018
EEPB-00000233	General ledger detail for account 1270 - Loan Joyce Brass for the year 2018

Other Documents Produced

2021-03-26 - Brass - Doc 01 - Voluntary Petition	Official Form 101, Voluntary Petition for Individuals Filing for Bankruptcy, Arthur Brass, dated March 26, 2021
2021-03-26 - Gulf Coast - Doc 01 - Voluntary Petition	Official Form 201, Voluntary Petition for Non-Individuals Filing for Bankruptcy, Gulf Coast Asphalt Company, LLC, dated March 26, 2021
2021-03-26 - Trifinery - Doc 01 - Voluntary Petition	Official Form 201, Voluntary Petition for Non-Individuals Filing for Bankruptcy, Trifinery, Inc., dated March 26, 2021
2021-04-27 - Brass Doc 19 - Form 106A_B Schedules	Official Form 106, Schedules of Property, Author Brass, dated April 27, 2021
2021-04-27 - Gulf Coast - Doc 11 - Form 206A_B - Schedule A_B Assets -- Real and Personal Property	Official Form 206A/B, Real and Personal Property, Gulf Coast Asphalt Company, LLC, dated April 27, 2021
2021-04-27 - Gulf Coast - Doc 12 - Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy	Official Form 207, Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy, Gulf Coast Asphalt Company, LLC, dated April 27, 2021
2021-04-27 - Trifinery - Doc 11 - Form 206A_B - Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy	Official Form 206A/B, Real and Personal Property, Trifinery, Inc., dated April 27, 2021
2021-04-27 - Trifinery - Doc 12 - Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy	Official Form 207, Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy, Trifinery, Inc., dated April 27, 2021
2021-7-12 - Brass - Doc 1 - ADVERSARY - 21-06007 - Complaint to determine Dischargeability of a Debt	Complaint To Determine Dischargeability Of A Debt, Superior Crude Gathering, Inc. v. Arthur J. Brass, dated July 12, 2021
2021-08-02 DOC 006 Brass 12b6 Motion to Dismiss	Arthur J. Brass' Motion To Dismiss Vitol's Complaint With Prejudice For Failure To State A Cause Of Action Under Rule 12(b)(6), Vitol Inc. v. Arthur J. Brass, dated August 2, 2021
2021-10-06 Doc 010 Vitol_s First Amended Complaint	First Amended Complaint To Determine Dischargeability Of Debts, Vitol Inc. v. Arthur J. Brass, dated October 6, 2021

Expert Report of Gene L. Deetz April 1, 2022

Appendix II - Documents Considered

File Name	Document Description
2021-10-13 Doc 011 Brass_s Original Answer	Arthur J. Brass's Answer To Amended Complaint Filed By Vitol, Inc., Vitol Inc. v. Arthur J. Brass, dated October 13, 2021
2021-10-20 Doc 012 Joint Discovery Plan	Joint Discovery/Case Management Plan Pursuant to Federal Rule of Civil Procedure 26(f) dated October 20, 2021
2021-10-24 Doc 013 Brass_s Initial Disclosures	Defendant's Rule 26(A) Initial Disclosures dated October 24, 2021
2021-10-29 Doc 014 Vitol_s Initial Disclosures	Plaintiff Vitol Inc.'s Initial Disclosures dated October 29, 2021
2021-11-03 Vitol_s First Requests for Production (adv)	Plaintiff Vitol Inc.'s First Request for Production of Documents dated November 3, 2021
2021-11-03 Vitol_s First Set of Interrogatories (adv)	Plaintiff Vitol Inc.'s First Set of Interrogatories to Debtor dated November 3, 2021
2021-11-03 Vitol_s First Set of Interrogatories (adv) responses copy	Defendant's Responses to Vitol's First Set of Interrogatories to Debtor dated November 3, 2021
2021-12-16 - Brass - Doc 85 - Amended Schedules	Amended Schedules to Official Form 106A/B, Schedules of Property, Arthur Brass, dated December 16, 2021
BK-VITOL_0000001	Email correspondence between Vitol and GCAC regarding follow-up of final settlement, dated April 2018
BK-VITOL_0000003	Email correspondence between Hall Maines Lugin and Reed Smith regarding production of documents, dated December 2019
BK-VITOL_0000006	Email correspondence between Hall Maines Lugin and Reed Smith regarding Vitol/GCAC Settlement Agreement, dated October 2020
BK-VITOL_0000008	Email correspondence from Hall Maines Lugin to Reed Smith regarding executed Vitol/GCAC Settlement Agreement, dated October 2020
BK-VITOL_0000009	Second Confidential Settlement Agreement and Mutual Global Release by and among A.J. Brass, GCAC, Trifinery, Inc. and Vitol, dated November 5, 2020
BK-VITOL_0000437	Email correspondence between Jaworski Law Firm, Reed Smith and Hall Maines Lugin regarding GCAC v. Vitol fully executed Rule 11 Agreement, dated September 16, 2020
BK-VITOL_0000438	Letter from Jaworski Law Firm to Hall Maines Lugin, Reed Smith and Schiffer Hicks Johnson regarding the Rule 11 Agreement and terms of settlement, dated September 14, 2020
BK-VITOL_0000441	Email correspondence between Fibich Leebron Copeland Briggs, Reed Smith and A.J. Brass regarding production of documents, dated December 2020
BK-VITOL_0000450	Email correspondence between Reed Smith and Hall Maines Lugin regarding executed Settlement Agreement and related settlement payment, dated October 2020
BK-VITOL_0000483	Gulf Coast Asphalt Company, LLC's Response to Vitol Inc.'s Third Set of Interrogatories and Third Requests for Production, dated October 19, 2018
BK-VITOL_0000524	Plaintiff's Second Amended Petition, GCAC v. Vitol, dated February 21, 2019
BK-VITOL_0000548_Depo Vol 1 (marked)	Deposition of Arthur J. Brass dated November 3, 2020 and related exhibits
BK-VITOL_0000681	Email correspondence from A.J. Brass to Vitol regarding interim balance due Vitol, dated February 13, 2018
BK-VITOL_0000691_Ex 6	Affidavit of Arthur J. Brass, dated June 15, 2018
BK-VITOL_0000695	Email correspondence from Vitol to A.J. Brass regarding amount due Vitol by GCAC, dated April 10, 2018
BK-VITOL_0000719	Email correspondence from Vitol to A.J. Brass regarding Vitol/GCAC settlement, dated April 13, 2018
BK-VITOL_0000723_Transcript	Deposition of Arthur Brass in the case of Vitol, Inc. v. Gulf Coast Asphalt, LLC dated June 28, 2018 and related exhibits
BK-VITOL_0000951	Email correspondence between Reed Smith and the Gerber Law Firm regarding the Vitol/GCAC Agreed Judgment, dated February 2021
BK-VITOL_0000954	Agreed Final Judgement of Gulf Coast Asphalt, LLC v. Vitol, Inc. dated November 20, 2020

Expert Report of Gene L. Deetz April 1, 2022
Appendix II - Documents Considered

File Name	Document Description
BK-VITOL_0000958	Judgment-Creditor Vitol's First Set of Requests for Production and First Set of Post-Judgment Interrogatories to Trifinery, Inc. in Aid of Collecting Its Judgment, GCAC v. Vitol v. A.J. Brass and Trifinery, dated December 30, 2020
BK-VITOL_0000968	Arthur J. Brass' Responses to Defendant's Request For Production and Interrogatories, GCAC v. Vitol v. A.J. Brass and Trifinery, dated December 23, 2020
BK-VITOL_0000988	Judgment-Creditor Vitol's First Set of Requests for Production and First Set of Post-Judgment Interrogatories to A.J. Brass in Aid of Collecting Its Judgment, GCAC v. Vitol v. A.J. Brass and Trifinery, dated November 25, 2020
BK-VITOL_0000999	Judgment-Creditor Vitol's First Set of Requests for Production and First Set of Post-Judgment Interrogatories to GCAC in Aid of Collecting Its Judgment, GCAC v. Vitol v. A.J. Brass and Trifinery, dated November 25, 2020
BK-VITOL_0001011	GCAC's Responses to Defendant's Request For Production and Interrogatories, GCAC v. Vitol v. A.J. Brass and Trifinery, dated December 23, 2020
BK-VITOL_0001027	Email correspondence between Reed Smith and the Gerber Law Firm regarding the Vitol/GCAC Agreed Judgment, dated February 2021
BK-VITOL_0001044	Email correspondence between Reed Smith and the Gerber Law Firm regarding the Vitol/GCAC Agreed Judgment, dated March 2021
BK-VITOL_0001060	Email correspondence from Reed Smith to the Gerber Law Firm regarding the Vitol/Brass LP Charging Order, dated February 25, 2021
BK-VITOL_0001061	Order Granting Vitol Inc.'s Motion for Entry of Charging Order on Arthur J. Brass's Partnership Interests in Limited Partnerships, GCAC v. Vitol v. A.J. Brass and Trifinery, dated February 10, 2021
BK-VITOL_0001063	Email correspondence from Reed Smith to A.J. Brass regarding Vitol/Brass/GCAC Order Granting Motion to Compel, dated February 5, 2021
BK-VITOL_0001064	Order Granting Vitol Inc.'s Post-Judgment Motion to Compel, GCAC v. Vitol, dated February 3, 2021
BK-VITOL_0001066	Answer to Writ of Garnishment, Vitol v. A.J. Brass, GCAC, Trifinery, Inc. and Cadence Bank, dated January 27, 2021
BK-VITOL_0001096	Email correspondence from Reed Smith to the Gerber Law Firm regarding document discovery and payment of settlement, dated March 9, 2021
BRASS000050-90	Brass IBC Bank Statements, June 2017-August 2018
BRASS000091	Invoice from Byer Builders to A.J. and Katie Brass dated August 1, 2017 and related documentation
Corpus Chrisit Case against GCAC	Plaintiff's Third Amended Original Petition in the case of Superior Crude Gathering, Inc. v. Gulf Coast Crude Gathering & Marketing, LLC, Gulf Coast Asphalt Company, LLC And Arthur J. Brass dated June 24, 2019
GCAC 009511-20	Account 1250 and 1270 Detail from GCAC General Ledger for the Period from January 1, 2015 to June 30, 2019
GCAC 009845- GCAC 010078	GCAC Bank Statements and Account Reconciliations, July 2017-July 2018
GCAC000001	Marketing Agreement between Mercuria Energy Trading, Inc. and Gulf Coast Asphalt Company, LLC dated January 2018
GCAC000257	Presentation to Vitol Regarding GCAC/Rio Asphalt Business dated May 16, 2017
GCAC000266	Assumed Vitol and GCAC Costs in the Joint Book
GCAC000271	GCAC/Vitol Analysis Assumed Vitol and GCAC Costs in the Joint Book, Altercation for Vitol Counter Proposal on May 23
GCAC000272	GCAC/Vitol Analysis Assumed Vitol and GCAC Costs in the Joint Book, Analysis of Profitability to Vitol under Vitol Counter Proposal dated May 23
GCAC000273	Vitol May 23 Proposal
GCAC000274	GCAC May 24 Counter Offer

Expert Report of Gene L. Deetz April 1, 2022
Appendix II - Documents Considered

File Name	Document Description
GCAC000277	Asphalt Venture - Simple Econs Spreadsheet
GCAC001216	Email from Ernie Kohnke to Dave Hubenak on Revised Joint Marketing Agreement dated July 12, 2017
GCAC001217	Redlined Joint Marketing Agreement between Vitol, Inc. and NewCo. dated July 2017
GCAC004631	Email from Eric Kuo to Patrick Perugini on 2 deals dated August 15, 2017
GCAC004666	Email from Patrick Perugini to Eric Kuo on Hedge Price dated August 18, 2017
GCAC004694	Email from Arthur Brass to Eric Kuo on Vitol Interim Financial Structure dated August 21, 2017
GCAC004695	Vitol/GCAC Interim Transaction
GCAC005167	Email from Eric Kuo to Patrick Perugini on Valt sale out of Rio Inventory dated September 15, 2017
GCAC005427	Email from Eric Kuo to Patrick Perugini on Exxon purchase dated September 25, 2017
GCAC005439	Email from Eric Kuo to Patrick Perugini on Valt two deals out of Rio Inventory dated September 25, 2017
GCAC005591	Email from Eric Kuo to Patrick Perugini on GCAC Sale to Valt out Rio Inventory dated October 2, 2017
GCAC005727	Email from Eric Kuo to Patrick Perugini and Arthur Brass on Sale of GCAC out of Rio dated October 11, 2017
GCAC005781	Email from Eric Kuo to Patrick Perugini on Exxon purchase dated October 16, 2017
GCAC006107	Email from Eric Kuo to Patrick Perugini on Vitol buys Davison dated November 2, 2017
GCAC006121	Email from Eric Kuo to Patrick Perugini on Citgo and Phillips purchases dated November 3, 2017
GCAC006224	Email from Eric Kuo to Patrick Perugini on deal recap dated November 16, 2017
GCAC006719	Email from Patrick Perugini to Eric Kuo on Confirmation of the deal dated December 8, 2017
GCAC007237	Email from Eric Kuo to Patrick Perugini on 2 deals out of Rio Inventory dated January 11, 2018
GCAC009509	Rio P&L through December 2016
GCAC009510	Rio P&L July 2017
GCAC009845	GCAC General Ledger
GCAC010095	Account statements and tax documents for GCAC, 2017-2018
January 25, 2019 Charter Forfeiture	Hermosa Energy LLC Certificate of Forfeiture dated January 25, 2019
July 3, 2017 Hermosa Energy LLC Certificate of Formation	Hermosa Energy LLC Certificate of Formation dated July 3, 2017
11-Nov	Cadence Bank statement for A.J. and Catherine Brass account 2609, November 2019
12-Dec	Cadence Bank statement for A.J. and Catherine Brass account 2609, December 2021
10-Oct	Cadence Bank statement for A.J. Brass and Hallie Brass account 4737, October 2019
10-Oct	Cadence Bank statement for A.J. Brass and Hallie Brass account 4737, October 2021
10-Oct	Cadence Bank statement for A.J. Brass and Diana Brass account 4919, October 2019
12-Dec	Cadence Bank statement for A.J. Brass and Diana Brass account 4919, December 2021
6-Jun	Cadence Bank statement for GCAC account 5961, June 2020
9-Sep	Cadence Bank statement for GCAC account 5961, September 2021
10-October	Cadence Bank statement for Catherine Brass real estate account 9550, October 2020
13-State	Cadence Bank statement for Catherine Brass real estate account 9550, December 2021
VCB000014-22	Personal financial statements for A.J. Brass, March 17, 2017

Expert Report of Gene L. Deetz April 1, 2022
Appendix II - Documents Considered

File Name	Document Description
VCB000023-27	Personal financial statements for A.J. Brass, August 9, 2018
VCB000597-598	Notice of Federal Tax Lien for A.J. and Catherine Brass, March 5, 2020
VCB000599-600	Notice of Federal Tax Lien for A.J. and Catherine Brass, October 31, 2018
VCB001174-176	Veritex Bank statement for GCAC sales account, June 2020
VCB001181-186	Veritex Bank statement for GCAC sales account, August 2019
VCB001251-253	Veritex Bank statement for GCAC operating account, June 2020
VCB001262-263	Veritex Bank statement for GCAC operating account, August 2019
VCB001360-361	Veritex Bank statement for GCAC payroll account, May 2020
VCB001368-369	Veritex Bank statement for GCAC payroll account, September 2019
VITOL_00000047	Email correspondence between Vitol and GCAC regarding amount due Vitol, dated February 2018
VITOL_00000120	Email correspondence between Vitol and GCAC regarding amount due Vitol, dated February 2018
VITOL_00000194	Email correspondence from A.J. Brass to Vitol regarding interim balance due Vitol, dated February 2018
VITOL_00000221	Email correspondence from A.J. Brass to Vitol regarding balance due Vitol, dated February 26, 2018
VITOL_00000228	Email from Arthur Brass to Eric Kuo on Vitol PP GCAC Splits dated May 19, 2017
VITOL_00000229	Vitol PP GCAC Splits dated May 19, 2017
VITOL_00000234	Email from Arthur Brass to Eric Kuo on Revised JSMA Structure dated May 23, 2017
VITOL_00000300	Email from Arthur Brass to Nick Fay on Profitability Analysis dated August 3, 2017
VITOL_00000304	Pro Forma Analysis with Summary Projections dated August 3, 2017
VITOL_00000326	Schedule of total product costs and reconciliation of amount due Vitol
VITOL_00000358	Email correspondence between Vitol and GCAC regarding amount due Vitol, dated February 2018
VITOL_00000377	Email correspondence between Vitol and GCAC regarding amount due Vitol, dated February 2018
VITOL_00002116	Email correspondence between Vitol and GCAC regarding amount due Vitol, dated February 2018
VITOL_00002127	Email from Eric Kuo to Jason Goldstein on GCAC 1st pass settlement with attached 1st pass settlement file dated January 25, 2018
VITOL_00004187	Email from Steve Barth to AJ Brass on joint venture talking points dated November 17, 2016
VITOL_00004188	Vitol/GCAC Transaction Overview dated November 2016
VITOL_00004222	Email correspondence from Vitol to GCAC regarding Vitol product sales to GCAC, dated February 5, 2018
VITOL_00004228_Production003_20190320	Email correspondence between Vitol and GCAC regarding support for deal related costs and amount due Vitol, dated February 2018
VITOL_00004261_Production001_20190207	Email correspondence between Vitol and GCAC regarding support for deal related costs and amount due Vitol, dated February 2018
VITOL_00004452	Email from Jason Goldstein to Steve Barth on Corpus Proposal thoughts dated November 28, 2016
VITOL_00004522_Production003_20190320	Email correspondence from Vitol to GCAC regarding Vitol cost sheet, dated March 26, 2018
VITOL_00004917	Email from Steve Barth to AJ Brass on Redline Joint Marketing Agreement dated June 2, 2017
VITOL_00004918	Amended and Restated Joint Marketing Agreement between Vitol and GCAC dated May 2017
VITOL_00004947	Email from Jason Goldstein to Eric Kuo on Trade Team Salaries and Benefits dated June 30, 2017
VITOL_00004948	Trade Team Salaries and Benefits dated June 30, 2017
VITOL_00006592_Production001_20190207	Email correspondence between Vitol and GCAC regarding support for deal related costs and amount due Vitol, dated February 2018
VITOL_00008558	Email from Jason Goldstein to Eric Kuo on Vitol Asphalt Book Splits dated May 25, 2017
VITOL_00008559	Vitol Asphalt Book Splits dated May 25, 2017

Expert Report of Gene L. Deetz April 1, 2022

Appendix II - Documents Considered

File Name	Document Description
VITOL_00072709	Email from Steve Barth to Jason Goldstein on existing offer dated April 13, 2017
VITOL_00073451	Email from Steve Barth to Steve Bake on USGC Asphalt dated May 10, 2017
VITOL_00075082	Email from Steve Barth to Mike Loya on GCAC dated June 10, 2015
VITOL_00078837	Email from Steve Barth to AJ Brass as follow up to meeting dated March 2, 2015
VITOL_00078947	Email from Steve Barth to Ernie Kohnke on executed JSMA dated May 10, 2017
VITOL_00078949	Joint Marketing Agreement between Rio Energy International, Inc. and Gulf Coast Asphalt Company dated February 2016
VITOL_00080111	Internal email correspondence at Vitol regarding GCAC payments, dated January 2018
VITOL_00080066	GCAC Costs by Deal
VITOL_00084993	GCAC Hedges - Futures/Swaps, July 2017 to February 2018
VITOL_00084994	Schedule of GCAC hedges - futures/swaps, July 2017-February 2018
VITOL_00001979	Email from Eric Kuo to AJ Brass on GCAC sheet dated April 10, 2018
VITOL_00001980	GCAC Costs by Deal
Vitol_125	Email from Vitol to A.J. Brass with attached draft Vitol Promissory Note, dated April 23, 2018
Vitol_4612	Email correspondence between Vitol and A.J. Brass regarding \$3.7 million payment, dated December 2017
VITOL_9572	Email from Ernie Kohnke to Dave Hubenak on Revised Joint Marketing Agreement dated July 12, 2017
Vitol_76042	Email correspondence between Vitol and GCAC regarding Vitol invoices and receipt of \$4 million payment from GCAC, dated November 2017
Vitol_00009562	Email from Jason Goldstein to Steve Barth on Discussion Doc dated June 27, 2017
Vitol_00007640	Email from Steve Barth to Jason Goldstein on Vitol/NewCo deal dated July 5, 2017
VITOL_00003093	Email correspondence between Vitol and GCAC regarding support for Vitol costs for deals 1-20, dated March 2018
VITOL_00003097	Email attachment of invoices and related documentation in support of Vitol costs for deals 1-20
VITOL_00006791	Email correspondence between Vitol and GCAC regarding support for Vitol costs for deals 21-33, dated March 2018
VITOL_00006795	Email attachment of invoices and related documentation in support of Vitol costs for deals 21-33
VITOL_00010074	Email correspondence between Vitol and GCAC regarding support for Vitol costs for deals 34-41, dated March 2018
VITOL_00010079	Email attachment of invoices and related documentation in support of Vitol costs for deals 34-41
VITOL_00007545	Email correspondence between Vitol and GCAC regarding support for Vitol costs for deals 42-50, dated March 2018
VITOL_00007550	Email attachment of invoices and related documentation in support of Vitol costs for deals 42-50
BK-VITOL_0000022_First settlement	Confidential Settlement Agreement and Mutual Global Release, GCAC v. Vitol v. A.J. Brass and Trifinery, dated October 2020
VITOL_00000475_14.9M Settlement proposal	Email from A.J. Brass to Vitol regarding settlement proposal, dated April 13, 2018
ArthurJBrass_PDFTran	Deposition of Arthur J. Brass dated March 25, 2022 and related exhibits

Other Documents

11 U.S. Code § 101 - Definitions	Definitions of Terms in 11 U.S. Code
11 U.S.C. § 548 – Fraudulent transfers and obligations	11 U.S.C. § 548 – Fraudulent transfers and obligations
AICPA Forensic & Valuation Services Practice Aid - 2020	AICPA Forensic & Valuation Services Practice Aid Providing Bankruptcy and Reorganization Services, Vol. 2 — Valuation in Bankruptcy

Expert Report of Gene L. Deetz April 1, 2022

Appendix II - Documents Considered

File Name	Document Description
Uniform Voidable Transactions Act	2014 Uniform Voidable Transactions Act (As Amended in 2014)
Vitol and Sargeant Marine's new asphalt business VALT launches today article	"Vitol and Sargeant Marine's new asphalt business VALT launches today" article dated February 29, 2016
Rio Energy Website https://www.rioenergy.com/#!/about	About Rio Energy website https://www.rioenergy.com/#!/about

Expert Report of Gene L. Deetz April 1, 2022

Amounts in USD dollars

Exhibit 1 - Unadjusted Monthly GCAC Balance Sheets									
Sources:	[A]	[B]	[B]	[B]	[B]	[B]	[A]	[B]	[B]
	June 2017	July 2017	August 2017	September 2017	October 2017	November 2017	December 2017	January 2018	
Cash	\$ (82,196)	\$ (4,786)	\$ 2,645,017	\$ 20,646	\$ 3,439,512	\$ 2,747,408	\$ 4,623,136	\$ 3,581,706	
Accounts Receivable Trade	1,233,304	3,386,865	2,913,754	6,292,708	7,270,799	8,039,853	712,898	532,855	
Accounts Receivable Trade Accrued	246,940	246,940	246,940	246,940	246,940	246,940	7,855,784	-	
Accounts Receivable Employees	429,915	429,785	429,785	429,785	429,785	439,385	392,946	385,046	
Accounts Receivable Trifinery Inc	(54,144)	(54,144)	(54,144)	(54,144)	(54,144)	(54,144)	(54,144)	(54,144)	
Accrued Interest Receivable	52,100	52,100	52,100	4,507	4,507	4,507	-	-	
Due From Shareholders	(712,635)	(827,635)	(154,898)	(84,648)	367,352	658,352	2,998,569	3,363,569	
Prepaid	7,698	13,229	18,760	30,659	36,748	42,578	6,995	32,289	
Total Current Assets	1,120,983	3,242,355	6,097,314	6,886,454	11,741,500	12,124,880	16,536,184	7,841,321	
Deposits & Bonds	112,000	112,000	112,000	112,000	112,000	112,000	32,000	32,000	
Investments in Arc Terminals	930,726	930,726	930,726	580,726	580,726	580,726	-	-	
Investments/Loan GCAC Holdings	4,183,753	4,183,753	4,183,753	4,183,753	4,183,753	4,183,753	4,183,753	4,183,753	
Investment Gulf Coast Crude	2,430,117	2,430,117	2,435,937	2,437,087	2,437,087	2,437,087	2,437,087	2,437,087	
Investment AJ Bullet	37,871	37,901	37,901	38,296	38,937	39,347	39,347	44,108	
Deferred Debit	-	-	141,313	1,938,515	1,938,515	6,544,997	-	-	
Goodwill	350,000	350,000	350,000	350,000	350,000	350,000	300,000	300,000	
Total Other Assets	8,044,467	8,044,497	8,191,629	9,640,376	9,641,017	14,247,910	6,992,187	6,996,947	
Total Assets	\$ 9,165,450	\$ 11,286,852	\$ 14,288,944	\$ 16,526,830	\$ 21,382,517	\$ 26,372,790	\$ 23,528,371	\$ 14,838,268	
Accounts Payable Trade	\$ 2,990,493	\$ 3,565,294	\$ 3,681,184	\$ 3,271,058	\$ 2,615,048	\$ 1,679,686	\$ 1,479,962	\$ 1,288,159	
Accounts Payable Accrued	-	-	-	-	-	-	8,934,401	30,540	
Accounts Payable Contingent Liability	166,619	-	-	-	-	-	14,866,973	14,866,973	
Deferred Credit	210,685	1,933,173	4,973,048	7,929,855	13,501,080	19,200,506	-	-	
Total Current Liabilities	3,367,797	5,498,467	8,654,232	11,200,913	16,116,128	20,880,192	25,281,336	16,185,671	
Member Shareholder Loan	240,000	240,000	240,000	240,000	240,000	240,000	240,000	240,000	
Total Long Term Debt	240,000	240,000	240,000	240,000	240,000	240,000	240,000	240,000	
Total Liabilities	3,607,797	5,738,467	8,894,232	11,440,913	16,356,128	21,120,192	25,521,336	16,425,671	
Retained Earnings	8,605,846	8,605,846	8,605,846	8,605,846	8,605,846	8,605,846	8,605,846	(1,992,965)	
Net Income	(3,048,192)	(3,057,461)	(3,211,134)	(3,519,929)	(3,579,457)	(3,353,247)	(10,598,811)	405,562	
Distributions	-	-	-	-	-	-	-	-	
Total Members' Equity	5,557,653	5,548,384	5,394,711	5,085,916	5,026,389	5,252,598	(1,992,965)	(1,587,403)	
Total Liabilities & Equity	\$ 9,165,450	\$ 11,286,852	\$ 14,288,944	\$ 16,526,830	\$ 21,382,517	\$ 26,372,790	\$ 23,528,371	\$ 14,838,268	

Sources:
[A] EEPB-00000174.
[B] GCAC009845.

Expert Report of Gene L. Deetz April 1, 2022

Amounts in USD dollars

Exhibit 1.1 - Base Case: Adjusts GCAC's Net Assets to Write-off Investments/Loan Accounts										
	30-Jun-17	31-Jul-17	31-Aug-17	30-Sep-17	31-Oct-17	30-Nov-17	31-Dec-17	31-Jan-18	Sources	Notes
Net Assets (Total Assets less Total Liabilities)	\$ 5,557,653	\$ 5,548,384	\$ 5,394,711	\$ 5,085,916	\$ 5,026,389	\$ 5,252,598	\$ (1,992,965)	\$ (1,587,403)	[A][B]	
Adjustments to Net Assets										
Write-off Amount Recorded as:										
Investments/Loan GCAC Holdings	(4,183,753)	(4,183,753)	(4,183,753)	(4,183,753)	(4,183,753)	(4,183,753)	(4,183,753)	(4,183,753)	[A][B]	[1]
Investment Gulf Coast Crude	(2,430,117)	(2,430,117)	(2,435,937)	(2,437,087)	(2,437,087)	(2,437,087)	(2,437,087)	(2,437,087)	[A][B]	[1]
Investment AJ Bullet	(37,871)	(37,901)	(37,901)	(38,296)	(38,937)	(39,347)	(39,347)	(44,108)	[A][B]	[1]
Subtotal	(6,651,741)	(6,651,771)	(6,657,591)	(6,659,135)	(6,659,777)	(6,660,187)	(6,660,187)	(6,664,947)	Calc.	
Adjusted Net Assets	\$ (1,094,088)	\$ (1,103,386)	\$ (1,262,879)	\$ (1,573,219)	\$ (1,633,387)	\$ (1,407,588)	\$ (8,653,152)	\$ (8,252,350)	Calc.	
Net Amounts Transferred and Recorded in the Loan Accounts for Arthur and Joyce:										
Amounts Transferred	\$ -	\$ (687,737)	\$ (70,250)	\$ (452,000)	\$ (296,000)	\$ (2,345,335)	\$ (365,000)		[B][C]	[2]
Amounts Repaid	115,000	15,000	-	-	5,000	5,118	-		[B][C]	[2]
Subtotal	115,000	115,000	(672,737)	(70,250)	(452,000)	(291,000)	(2,340,217)	(365,000)	Calc.	
Cumulative Net Amounts Transferred		\$ (557,737)	\$ (627,987)	\$ (1,079,987)	\$ (1,370,987)	\$ (3,711,204)	\$ (4,076,204)		Calc.	

Sources:

[A] EEPB-00000174.

[B] GCAC009845.

[C] GCAC009511-20.

Notes:

[1] These entities appear to be non-operating as they have minimal assets if any, negative net assets, zero revenues, and losses. Therefore I have removed these investments/loans from GCAC's balance sheet as these related parties do not appear to have the ability to repay any of these amounts to GCAC if they are treated as loans, and if they are accounted for as investments they appear worthless. See Deetz Exhibits 4, 5, and 6 for an analysis of these entities.

[2] During the period of June 30, 2017 through January 31, 2018 the Arthur and Joyce loan accounts (net amounts transferred from GCAC) increased by \$4,076,204. During this same time period, the gross amounts transferred to Arthur and Joyce were \$4,216,322, and payments back to GCAC were \$140,118. See Deetz Exhibit 3 for further analysis of these loan accounts.

Expert Report of Gene L. Deetz April 1, 2022

Amounts in USD dollars

Exhibit 1.2 - Sensitivity Case: Adjusts GCAC's Net Assets to Write-off Investments/Loan Accounts and Adjusts \$14.8 million in Accounts Payable Contingent Liabilities to Vitol's \$10 million Judgment									
	<u>30-Jun-17</u>	<u>31-Jul-17</u>	<u>31-Aug-17</u>	<u>30-Sep-17</u>	<u>31-Oct-17</u>	<u>30-Nov-17</u>	<u>31-Dec-17</u>	<u>31-Jan-18</u>	Sources Notes
Net Assets (Total Assets less Total Liabilities)	\$ 5,557,653	\$ 5,548,384	\$ 5,394,711	\$ 5,085,916	\$ 5,026,389	\$ 5,252,598	\$ (1,992,965)	\$ (1,587,403)	[A][B]
Adjustments to Net Assets									
Write-off Amount Recorded as:									
Investments/Loan GCAC Holdings	(4,183,753)	(4,183,753)	(4,183,753)	(4,183,753)	(4,183,753)	(4,183,753)	(4,183,753)	(4,183,753)	[A][B]
Investment Gulf Coast Crude	(2,430,117)	(2,430,117)	(2,435,937)	(2,437,087)	(2,437,087)	(2,437,087)	(2,437,087)	(2,437,087)	[A][B]
Investment AJ Bullet	(37,871)	(37,901)	(37,901)	(38,296)	(38,937)	(39,347)	(39,347)	(44,108)	[A][B]
Subtotal	(6,651,741)	(6,651,771)	(6,657,591)	(6,659,135)	(6,659,777)	(6,660,187)	(6,660,187)	(6,664,947)	Calc.
Replace Accounts Payable Contingent Liability with \$10m Vitol Judgment									
Addback - Total Accounts Payable Contingent Liability							14,866,973	14,866,973	[A][B]
Replace with \$10 million Vitol Judgment							(10,000,000)	(10,000,000)	[C] [1]
Subtotal							4,866,973	4,866,973	Calc.
Adjusted Net Assets	\$ (1,094,088)	\$ (1,103,386)	\$ (1,262,879)	\$ (1,573,219)	\$ (1,633,387)	\$ (1,407,588)	\$ (3,786,179)	\$ (3,385,377)	Calc.

Sources:

[A] EEPB-00000174.

[B] GCAC009845.

[C] November 20, 2020 Agreed and Final Judgment for Vitol resolving all matters and disposing of all issues in the Harris County District Court litigation Cause No. 2018-31578.

Notes:

[1] Included in GCAC's December 31, 2017 and January 31, 2018 balance sheet is a \$14.8 million accrual for remaining unpaid product cost and other transaction costs as calculated by Vitol. I have replaced these accrued costs with the final agreed judgment in favor of Vitol of \$10 million.

Expert Report of Gene L. Deetz April 1, 2022

Amounts in USD dollars

Exhibit 2 - Actual and Adjusted – GCAC's Monthly and Cumulative Income Before Taxes										
	<u>30-Jun-17</u>	<u>31-Jul-17</u>	<u>31-Aug-17</u>	<u>30-Sep-17</u>	<u>31-Oct-17</u>	<u>30-Nov-17</u>	<u>31-Dec-17</u>	<u>31-Jan-18</u>	Sources	Notes
<u>Income Statement - Actual</u>										
Per month Income / (Loss) before taxes	\$ -	\$ (9,269)	\$ (153,673)	\$ (308,795)	\$ (59,528)	\$ 226,209	\$ (7,245,564)	\$ 405,562	[A][B]	
Cumulative Income / (Loss) before taxes from January 2017	\$ (3,048,192)	\$ (3,057,461)	\$ (3,211,134)	\$ (3,519,929)	\$ (3,579,457)	\$ (3,353,247)	\$ (10,598,811)	\$ (10,193,249)	Calc.	[1]
<u>Income Statement - Adjusted</u>										
Per month Income / (Loss) before taxes		\$ (9,269)	\$ (153,673)	\$ (308,795)	\$ (59,528)	\$ 226,209	\$ (7,245,564)	\$ 405,562	[A][B]	
Exhibit 1.2 Sensitivity Case Adjustment							4,866,973			Deetz Exhibit 1.2
Adjusted - Per month Income / (Loss) before taxes	\$ -	\$ (9,269)	\$ (153,673)	\$ (308,795)	\$ (59,528)	\$ 226,209	\$ (2,378,591)	\$ 405,562	Calc.	
Adjusted - Cumulative Income / (Loss) before taxes from January 2017	\$ (3,048,192)	\$ (3,057,461)	\$ (3,211,134)	\$ (3,519,929)	\$ (3,579,457)	\$ (3,353,247)	\$ (5,731,838)	\$ (5,326,276)	Calc.	

Sources:

[A] GCAC009845.

[B] EEPB-00000175.

Notes:

[1] The monthly loss from January 2017 through June 2017 is as follows:

January	\$ (1,214,751)	
February	(434,257)	
March	(400,632)	
April	(485,332)	
May	(503,086)	
June	(7,795)	
Difference	(2,337)	June 2017 Prepared Balance Sheet vs. General Ledger
Rounding	(2)	
Total	\$ (3,048,192)	[B]

Expert Report of Gene L. Deetz April 1, 2022

Amounts in USD dollars

Exhibit 3: Summary of GCAC's General Ledger Accounts 1250-Loan AJ Brass, and 1270-Loan Joyce Brass											
Year	Activity Period	Account 1250-AJ Brass			Account 1270-Joyce Brass			Total	Sources	Notes	
		Loans	Repayments	Balance	Loans	Repayments	Balance	Loan Balance		[1]	
1/1/2015		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
2015	1/1-6/30	1,635,045	(150,000)	1,485,045	136,757	-	136,757	1,621,802	[A]		
2015	7/1-12/31	1,000,000	(500,000)	1,985,045	-	(49,160)	87,597	2,072,642	[A]		
2016	1/1-6/30	1,462,648	(1,330,000)	2,117,693	-	-	87,597	2,205,290	[A]		
2016	7/1-12/31	166,000	(952,000)	1,331,693			87,597	1,419,290	[A]		
2017	1/1-6/30	836,975	(2,968,000)	(799,332)	-	(900)	86,697	(712,635)	[A][B]		
Account Balance at 6/30/2017		5,100,668	(5,900,000)	(799,332)	136,757	(50,060)	86,697	(712,635)	Calc.		
Activity from 7/1-12/31 2017		3,031,322	(140,118)	2,891,204	820,000	-	820,000	3,711,204	[A][B]	[2][3][4]	
Account Balance at 12/31/2017		\$ 8,131,990	\$ (6,040,118)	\$ 2,091,872	\$ 956,757	\$ (50,060)	\$ 906,697	\$ 2,998,569	Calc.		
2018	1/1-6/30	1,592,020	-	3,683,892	689,749	-	1,596,445	5,280,338	[A]	[4]	
2018	7/1-12/31	1,141,000	(130,000)	4,694,892	105,000	(150,000)	1,551,445	6,246,338	[A]	[4]	
2019	1/1-6/30	1,181,552	(110,000)	5,766,444	250,000	(240,000)	1,561,445	7,327,889	[A]		
Account Balance at 6/30/2019		\$ 12,046,562	\$ (6,280,118)	\$ 5,766,444	\$ 2,001,505	\$ (440,060)	\$ 1,561,445	\$ 7,327,889	Calc.		

Source:
[A] GCAC 009511-20.
[B] GCAC009845.

Notes:
[1] On the balance sheet of GCAC there is an additional liability account #3613 - Member Shareholder Loan in the amount of \$240,000.
[2] In the month of January 2018 GCAC made four additional transfers recorded as loans to Arthur totaling \$325,000, and made an additional transfer recorded as a loan to Joyce of \$40,000. There were no repayments in January 2018.
[3] The total net amounts transferred from July 2017 through January 2018 is \$4,076,204. See Deetz Exhibit 1.1. This is the 6-month ending December 31, 2017 activity of \$3,711,204 plus \$365,000 in January 2018.
[4] The general ledger produced to me in this matter cover the periods from July 1, 2017 through July 31, 2018 and includes all of the detailed transactions impacting Arthur's and Joyce's loan accounts. I have confirmed that each journal entry from 7/1/2017 through 7/31/2018 reflects a cash transaction with a net cash outflows through June 30, 2018 of \$5,992,973.

Expert Report of Gene L. Deetz April 1, 2022

Amounts in USD dollars

Exhibit 4: Non-operating GCAC Entities - Summary of Assets and Liabilities									
	GCAC	Gulf Crude		Sources	Notes	GCAC	Gulf Crude		Sources
	Holdings	Gathering	AG Bullet			Holdings	Gathering	AG Bullet	
Total Assets				[A]					
January 2017	\$ 3,436	\$ 211	\$ 3,370						
February 2017	-	211	3,370						
March 2017	-	211	3,370						
April 2017	-	211	3,370						
May 2017	-	211	3,370						
June 2017	-	17,838	6,041						
December 2017	-	168	6,336						
December 2018	-	168	6,041	[B]					
Total Liabilities				[A]		Investments/Loans due to GCAC included in			
						Total Liabilities			[A]
January 2017	(4,187,189)	(4,735,523)	(37,831)		[1]	(4,187,189)	(2,108,804)	(37,831)	
February 2017	(4,183,753)	(4,736,597)	(37,831)			(4,183,753)	(2,109,878)	(37,831)	
March 2017	(4,183,753)	(4,736,597)	(38,576)			(4,183,753)	(2,109,878)	(37,831)	
April 2017	(4,183,753)	(4,736,597)	(38,576)			(4,183,753)	(2,109,878)	(37,831)	
May 2017	(4,183,753)	(4,736,597)	(38,576)			(4,183,753)	(2,109,878)	(37,831)	
June 2017	(4,183,753)	(5,018,240)	(39,404)			(4,183,753)	(2,430,117)	(37,831)	
December 2017	(4,183,753)	(5,026,470)	(40,092)			(4,183,753)	(2,437,087)	(39,347)	
December 2018	(4,183,753)	(5,026,470)	(58,973)	[B]		(4,183,753)	(2,437,087)	(58,973)	[B]

Source:
[A] EEPB-00000174.
[B] EEPB-00000181.

Notes:
[1] GCAC Crude Gathering and AG Bullet have accrued liabilities in addition to intercompany debt payable to GCAC, and GCAC Crude Gathering has \$1.5 million of prepaid sales recorded as a liability.

Expert Report of Gene L. Deetz April 1, 2022

*Amounts in USD dollars***Exhibit 5: Non-operating GCAC Entities - Summary of Monthly Losses**

	GCAC Holdings	Gulf Crude Gathering	AG Bullet	Sources	Notes
Monthly Income/(Losses) Before Taxes				[A]	
January 2017	\$ -	\$ -	\$ (3,669)		
February 2017	-	(1,075)	-		
March 2017	-	-	(745)		
April 2017	-	-	-		
May 2017	-	-	-		
June 2017	-	(264,016)	1,844		
January through June 2017	\$ -	\$ (265,091)	\$ (2,570)	[A]	Calc.
January through December 2017	\$ -	\$ (290,991)	\$ (2,964)	[A]	

Source:

[A] EEPB-00000175.

Expert Report of Gene L. Deetz April 1, 2022

*Amounts in USD dollars***Exhibit 6: Non-operating GCAC Entities - Summary of Revenues and Expenses**

	GCAC Holdings	Gulf Crude Gathering	AG Bullet	Sources	Notes
Monthly Revenues				[A]	
January 2017	\$ -	\$ -	\$ -		
February 2017	-	-	-		
March 2017	-	-	-		
April 2017	-	-	-		
May 2017	-	-	-		
June 2017	-	-	-		
January through June 2017	<u>-</u>	<u>-</u>	<u>-</u>	[A]	Calc.
January through December 2017	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	[A]	
Monthly Expenses				[A]	
January 2017	\$ -	\$ -	\$ (3,669)		
February 2017	-	(1,075)	-		
March 2017	-	-	(745)		
April 2017	-	-	-		
May 2017	-	-	-		
June 2017	-	(264,016)	1,844		
January through June 2017	<u>\$ -</u>	<u>\$ (265,091)</u>	<u>\$ (2,570)</u>	[A]	Calc.
January through December 2017	<u>\$ -</u>	<u>\$ (290,991)</u>	<u>\$ (2,964)</u>	[A]	

Source:

[A] EEPB-00000175.

Expert Report of Gene L. Deetz April 1, 2022

Amounts in USD dollars

Exhibit 7: GCAC's Cash Sales and Payments for Product Inventory from July 2017 through January 2018													
Month	Actual Vitol/ GCAC Transactions						Month	But-For Vitol/ GCAC Transactions					
	Beginning Cash Balance	Cash Sales	Product Inventory When Paid	Net Distributions to Arthur and Joyce	Other Sources/(Uses) of Cash	Ending Cash Balance		Beginning Cash Balance	Cash Sales	Product Inventory When Incurred	Net Distributions to Arthur and Joyce	Other Sources/(Uses) of Cash	Ending Cash Balance
Sources:	[A]	[A]	[A]	Deetz Exhibit 1.1	[A]	[A]		[A]	[A]	[A]	Deetz Exhibit 1.1	[A]	[A]
Notes:				[1]						[2]	[1]		
July 2017	\$ (82,196)	\$ 285,063	\$ -	\$ 115,000	\$ (322,653)	\$ (4,786)	July 2017	\$ (82,196)	\$ 285,063	\$ (207,393)	\$ 115,000	\$ (322,653)	\$ (212,178)
August 2017	(4,786)	3,039,874	-	(672,737)	282,666	2,645,017	August 2017	(212,178)	3,039,874	(2,211,608)	(672,737)	282,666	226,017
September 2017	2,645,017	-	(1,690,065)	(70,250)	(864,056)	20,646	September 2017	226,017	-	-	(70,250)	(864,056)	(708,289)
October 2017	20,646	4,806,272	(107,137)	(452,000)	(828,269)	3,439,512	October 2017	(708,289)	4,806,272	(3,496,720)	(452,000)	(828,269)	(679,006)
November 2017	3,439,512	4,961,458	(4,000,000)	(291,000)	(1,362,562)	2,747,408	November 2017	(679,006)	4,961,458	(3,609,623)	(291,000)	(1,362,562)	(980,733)
December 2017	2,747,408	7,411,428	(3,700,000)	(2,340,217)	504,518	4,623,136	December 2017	(980,733)	7,411,428	(5,392,056)	(2,340,217)	504,518	(797,061)
January 2018	4,623,136	10,010,956	(8,934,401)	(365,000)	(1,752,986)	3,581,706	January 2018	(797,061)	10,010,956	(7,283,298)	(365,000)	(1,752,986)	(187,388)
Total		\$ 30,515,051	\$ (18,431,603)	\$ (4,076,204)	\$ (4,343,343)		Total		\$ 30,515,051	\$ (22,200,697)	\$ (4,076,204)	\$ (4,343,343)	

Percentage of Total Product Inventory to Cash Sales 72.8%

Sources:
[A] GCAC009845.

Notes:
[1] In December 2017, GCAC's general ledger [GCAC009845] indicates that 59,205 shares of Arc Terminals stock were sold for \$978,235 and instead of collecting the cash, it recorded a loan receivable due from Arthur, which indicates that Arthur received the cash directly.
[2] Applying the 72.8% ratio (product inventory of \$22.2 million as a percentage of sales of \$30.5 million) to the month in which cash sales were recorded.

Expert Report of Gene L. Deetz April 1, 2022

Amounts in USD dollars

Exhibit 8 - GCAC's Monthly Net Working Capital, Including Cash																	
Sources:	[A]	[B]	[B]	[B]	[B]	[B]	[A]	[B]	[B]								
	June 2017	July 2017	August 2017	September 2017	October 2017	November 2017	December 2017	January 2018									
Cash	\$	(82,196)	\$	(4,786)	\$	2,645,017	\$	20,646	\$	3,439,512	\$	2,747,408	\$	4,623,136	\$	3,581,706	
Accounts Receivable Trade		1,233,304		3,386,865		2,913,754		6,292,708		7,270,799		8,039,853		712,898		532,855	
Accounts Receivable Trade Accrued		246,940		246,940		246,940		246,940		246,940		246,940		7,855,784		-	
Accounts Receivable Employees		429,915		429,785		429,785		429,785		429,785		439,385		392,946		385,046	
Accounts Receivable Trifinery Inc		(54,144)		(54,144)		(54,144)		(54,144)		(54,144)		(54,144)		(54,144)		(54,144)	
Accrued Interest Receivable		52,100		52,100		52,100		4,507		4,507		4,507		-		-	
Due From Shareholders		(712,635)		(827,635)		(154,898)		(84,648)		367,352		658,352		2,998,569		3,363,569	
Prepaid		7,698		13,229		18,760		30,659		36,748		42,578		6,995		32,289	
Total Current Assets		1,120,983		3,242,355		6,097,314		6,886,454		11,741,500		12,124,880		16,536,184		7,841,321	[A]
Deposits & Bonds		112,000		112,000		112,000		112,000		112,000		112,000		32,000		32,000	
Investments in Arc Terminals		930,726		930,726		930,726		580,726		580,726		580,726		-		-	
Investments/Loan GCAC Holdings		4,183,753		4,183,753		4,183,753		4,183,753		4,183,753		4,183,753		4,183,753		4,183,753	
Investment Gulf Coast Crude		2,430,117		2,430,117		2,435,937		2,437,087		2,437,087		2,437,087		2,437,087		2,437,087	
Investment AJ Bullet		37,871		37,901		37,901		38,296		38,937		39,347		39,347		44,108	
Deferred Debit		-		-		141,313		1,938,515		1,938,515		6,544,997		-		-	[B]
Goodwill		350,000		350,000		350,000		350,000		350,000		350,000		300,000		300,000	
Total Other Assets		8,044,467		8,044,497		8,191,629		9,640,376		9,641,017		14,247,910		6,992,187		6,996,947	
Total Assets	\$	9,165,450	\$	11,286,852	\$	14,288,944	\$	16,526,830	\$	21,382,517	\$	26,372,790	\$	23,528,371	\$	14,838,268	
Accounts Payable Trade	\$	2,990,493	\$	3,565,294	\$	3,681,184	\$	3,271,058	\$	2,615,048	\$	1,679,686	\$	1,479,962	\$	1,288,159	
Accounts Payable Accrued		-		-		-		-		-		-		8,934,401		30,540	
Accounts Payable Contingent Liability		166,619		-		-		-		-		-		14,866,973		14,866,973	
Deferred Credit		210,685		1,933,173		4,973,048		7,929,855		13,501,080		19,200,506		-		-	
Total Current Liabilities		3,367,797		5,498,467		8,654,232		11,200,913		16,116,128		20,880,192		25,281,336		16,185,671	[C]
Total Current Assets less Total Current Liabilities and including Deferred Debit amounts.	\$	(2,246,814)	\$	(2,256,112)	\$	(2,415,606)	\$	(2,375,944)	\$	(2,436,113)	\$	(2,210,314)	\$	(8,745,152)	\$	(8,344,350)	[D] = [A] + [B] - [C]
Total Current Assets less Total Current Liabilities and including Deferred Debit amounts adjusted for \$10m Vitol Judgment (\$8,745,151+\$14,866,973-\$10,000,000) for December 2017 and January 2018.	\$	(2,246,814)	\$	(2,256,112)	\$	(2,415,606)	\$	(2,375,944)	\$	(2,436,113)	\$	(2,210,314)	\$	(3,878,179)	\$	(3,477,377)	[D] = [A] + [B] - [C]

Sources:

[A] EEPB-00000174.

[B] GCAC009845.

Expert Report of Gene L. Deetz April 1, 2022

Amounts in USD dollars

Exhibit 9: Vitol's Calculation of Amounts Due from GCAC Sent to Arthur on April 10, 2018 Compared to Amounts Recorded by GCAC						
	Sources:	[A]	[B]	Calc.	Memo Line	Notes:
		Vitol	GCAC	Difference	GCAC Journal Entry	
Product cost true up due Vitol	\$	3,769,093	\$ 3,769,093	\$ -	GJ/JT12-38	
Deal related costs (Freight, Demurrage, Inspection, etc.)		1,339,629	1,325,088	14,541	GJ/JT12-23	[1]
Storage related costs (Tank lease, heat, throughput, take or pay)		2,632,253	2,632,253	-	GJ/JT12-22	
TVM		351,012	255,551	95,461	GJ/JT12-33	[2]
TCR		200,890	174,048	26,843	GJ/JT12-23	[1]
Hedging		6,244,480	6,431,730	(187,250)	GJ/JT12-34	
Arc Mobile tank rental Jul '17 & Aug '17 (\$139,605 x 2)		-	279,210	(279,210)	GJ/JT12-30	
Freight Titanio delivery Deal #3		256,590		256,590		
	\$	14,793,947	\$ 14,866,973	\$ (73,026)		

Sources:

[A] Vitol_80066. The workbook bates stamped Vitol_00001980 was produced by Vitol (and is the same workbook as the workbook bates stamped Vitol_80066) and sent to AJ Brass on April 10, 2018 in Vitol_00001979.

[B] GCAC 009845.

Notes:

[1] In journal entry GJ/JT12-23, GCAC records amounts for interest which add up to \$174,048 that I assume relate to the counter party credit charge known as TCR in Vitol's schedule.

[2] From Vitol_80066, tab 'GCAC TVM' at row 183, the amount GCAC records is the amount calculated as of December 31, 2017. The amount Vitol presents in Vitol_80066 is as of April 10, 2018.

EXHIBIT D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

In re:	§	Chapter 7
	§	
ARTHUR JACOB BRASS,	§	Case No. 21-60025
	§	
Debtor.	§	
	§	
<hr/>		
VITOL INC.	§	
	§	
	§	
v.	§	Adversary No. 21-06006
	§	
ARTHUR JACOB BRASS	§	

DECLARATION OF GENE L. DEETZ

Pursuant to 28 U.S.C. § 1746, Gene L. Deetz declares as follows:

1. I have been asked by Reed Smith, LLP (“Reed Smith”), counsel to Vitol, to analyze the solvency and financial condition of Gulf Coast Asphalt Corporation (“GCAC”) as of three dates: June 30, 2017, December 31, 2017 and January 31, 2018, using the three recognized solvency tests: the balance sheet, adequate capital, and cash flow tests.

2. Additionally, I was asked to prepare a summary of the accounting for the Vitol/GCAC Transactions, and document GCAC’s use of the proceeds from the sales of asphalt (originally purchased by Vitol) by GCAC to third parties, and the transfers from GCAC to Arthur Brass and Joyce Brass.

3. Attached hereto as **Exhibit A** is a true and correct copy of my report issued on April 1, 2022. My report contains a complete statement of all my opinions and the basis for them including the methodologies I have applied in reaching my opinions. It also contains a complete list of the data and documents produced in this matter that I have considered in forming my opinions. The report also includes my analysis reflected in exhibits, my qualifications including a

list of all my publications in the previous 10 years and a list of all other cases in which I have testified in the previous 4 years, and a statement of my hourly rate and the range of rates for staff working under my direction.

4. The documents I considered in rendering my opinions are contained in Appendix II to my report and include the general ledger of GCAC, monthly balance sheets, income statements, and other accounting documents of GCAC, bank records of GCAC, Vitol and GCAC analysis and correspondence of the status of the asphalt purchases and sales, settlement correspondence and pleadings, depositions of Arthur Brass, and other materials produced and subpoenaed in this proceeding.

5. If called to testify at trial in this matter, I would testify consistently with the statements contained in my report.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on May 9, 2022

/s/ Gene L. Deetz

Gene L. Deetz

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

In re:	§	Chapter 7
	§	
ARTHUR JACOB BRASS,	§	Case No. 21-60025
	§	
Debtor.	§	
<hr/>		
VITOL INC.	§	
	§	
v.	§	Adversary No. 21-06006
	§	
ARTHUR JACOB BRASS	§	

PLAINTIFF VITOL INC.'S AMENDED WITNESS AND EXHIBIT LIST

Plaintiff Vitol Inc. (“**Plaintiff**”) hereby submits its *Amended Witness and Exhibit List for Trial*.

WITNESSES

Plaintiff designates the following individuals who may be called as witnesses:

- (a) Gene Deetz, *expert*
- (b) Mike Ruzek
- (c) Mike Loya
- (d) Eric Kuo
- (e) James Tolbert
- (f) A.J. Brass
- (g) Chris Murray, as chapter 7 trustee for Gulf Coast Asphalt Company, LLC
- (h) Jason Goldstein
- (i) John Tomaszewski [may be presented by deposition testimony]
- (j) EEPB, PC [unless presented by business records affidavit]
- (k) IberiaBank [unless presented by business records affidavit]

- (l) International Bank of Commerce [unless presented by business records affidavit]
- (m) Cadence Bank [unless presented by business records affidavit]
- (n) Chubb Lloyd's Insurance Company of Texas [unless presented by business records affidavit]
- (o) Kevin Boston
- (p) DZ Jewelry, LLC [unless presented by business records affidavit]
- (q) Veritex Community Bank [unless presented by business records affidavit]
- (r) Any witness listed or called by any other party.
- (s) Any witness necessary to rebut the testimony of a witness called or designated by any other party.

Plaintiff reserves the right to call or not call any witnesses designated by any other party, as well as rebuttal witnesses.

EXHIBITS

Plaintiff designates the following exhibits that may be admitted:

No.	Beg. Bates	End Bates	Date	Description	O f f e r	A d m i t
<i>Emails</i>						
1	VITOL_00004187	VITOL_00004188	11/17/2016	Email re: GCAC Talking Points (and attachment)		
2	VITOL_00073451	VITOL_00073453	5/10/2017	Email chain re: USGC Asphalt		
3	VITOL_00000791	VITOL_00000791	7/17/2017	Email re Purchase Citgo SHCF		
4	VITOL_00001834	VITOL_00001835	7/21/2017	Email re Summary Truck Report		
5	VITOL_00001836	VITOL_00001836	7/21/2017	Excel attachment to email re Summary Truck Report		
6	VITOL_00001837	VITOL_00001844	7/21/2017	Attachment to Summary Truck Report: presentation to Vitol re GCAC/Rio asphalt business		
7	VITOL_00000379	VITOL_00000379	8/1/2017	Email re Rio Energy Invoice		
8	AJB0003997	AJB0003997	8/1/2017	Email re cash needed		
9	AJB0003960	AJB0003960	8/3/2017	Email re Payroll account		
10	AJB0003984	AJB0003984	8/3/2017	Email re wires did not come in ... need to cover!		
11	AJB0004657	AJB0004657	8/3/2017	Email re payroll account		
12	GCAC004631	GCAC004632	8/15/2017	Email 2 deals		
13	GCAC004666	GCAC004666	8/18/2017	Email re Hedge price		

No.	Beg. Bates	End Bates	Date	Description	O f f e r	A d m i t
14	GCAC004694	GCAC004695	8/21/2017	Email re Interim Financing Structure Bullets (with attachment)		
15	AJB0005305	AJB0005306	8/21/2017	Email re Interim Financing Structure Bullets AJB (with attachment)		
16	AJB0005448	AJB0005449	8/21/2017	Email re Interim Financing Structure Bullets (with attachment)		
17	VITOL_00000794	VITOL_00000794	8/25/2017	Email re image001		
18	GCAC005167	GCAC005168	9/15/2017	Email re Valt sale out of Rio-mobile		
19	GCAC005427	GCAC005428	9/25/2017	Email re Exxon purchase		
20	GCAC005439	GCAC005444	9/25/2017	Email re 2 deals out of Rio Inventory		
21	GCAC005591	GCAC005593	10/2/2017	Email re GCAC sale to valt out rio inventory		
22	VITOL_00000801	VITOL_00000801	10/11/2017	Email re Sale from GCAC to Gunvor		
23	GCAC005727	GCAC005728	10/11/2017	Email re Sale from GCAC to Gunvor		
24	GCAC005781	GCAC005783	10/16/2017	Email re exxon purchase		
25	Vitol_00001083	Vitol_00001085	10/25/2017	Email re Draft term sheet GCAC		
26	GCAC006121	GCAC006122	11/3/2017	Email re Citgo and Phillips purchases		
27	GCAC006224	GCAC006227	11/16/2017	Email re REVISED Deal recap		
28	AJB0004098	AJB0004100	11/16/2017	Email re Vitol Invoices		
29	GCAC006719	GCAC006719	12/8/2017	Email re Confirmation		
30	GCAC006722	GCAC006724	12/8/2017	Email re Reconciliation 11-28		
31	GCAC006725	GCAC006725	12/8/2017	Excel attachment to Reconciliation 11-28: GCAC/Rio summary		
32	GCAC006726	GCAC006726	12/8/2017	Excel attachment to Reconciliation 11-28: Vitol/Rio/Asphalt deals		
33	VITOL_00004500	VITOL_00004500	12/8/2017	Email re GCAC-Rio Reconciliation		
34	VITOL_00004501	VITOL_00004501	12/8/2017	Excel attachment to Email re GCAC-Rio Reconciliation: reconciliation from GCAC with alleged actual volumes		
35	AJB0004103	AJB0004103	12/15/2017	Email re Wire to Vitol		
36	VITOL_00001726	VITOL_00001727	12/15/2017	Email re Payment		
37	GCAC007237	GCAC007243	1/11/2018	Email re 2 deals out of Rio inventory		
38	VITOL_00000819	VITOL_00000820	1/12/2018	Email re p66 asphalt price		
39	VITOL_00000341	VITOL_00000342	1/16/2018	Email re GCAC-Rio Reconciliation 12-20		
40	VITOL_00000343	VITOL_00000343	1/16/2018	Email re GCAC Rio Reconciliation 12-20		
41	VITOL_00000344	VITOL_00000344	1/16/2018	Excel attachment to Email re GCAC-Rio Reconciliation 12-20		
42	VITOL_00000821	VITOL_00000826	1/19/2018	Email re 2 deals out of Rio Inventory		
43	VITOL_00000827	VITOL_00000827	1/19/2018	Email re Deal 50		
44	VITOL_00002127	VITOL_00002129	1/25/2018	Email re GCAC 1 st Pass Settlement		
45	VITOL_00002130	VITOL_00002130	1/25/2018	Excel attachment: GCAC 1st pass settlement		
46	VITOL_00072820	VITOL_00072822	1/25/2018	Email re GCAC Inspection Reports		
47	AJB0000008	AJB0000008	1/26/2018	Email re Vitol		
48	VITOL_00074556	VITOL_00074558	1/30/2018	Email re GCAC		
49	VITOL_00002197	VITOL_00002198	2/5/2018	Email re Product Sales to GCAC		

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51	VITOL_00000194	VITOL_00000194	2/13/2018	Email re Fwd:		
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63	20201021_0000080	20201021_0000080	12/31/2017	Gulf Coast Asphalt Company Consolidated Income Statements 2017 (EEPB-00000175)		
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66	20220218_0000021		12/31/2018	2018 GCAC consolidated Income Statement		
67	20220218_0000043		12/31/2018	consolidated balance sheet		
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77	Chubb000001	Chubb001175	2/23/2022	Business Records of Chubb Lloyds Insurance Company of Texas with Business Records Affidavit (admitted under FRE 902(11) & FRE 807)		

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Dated: **September 5, 2022.**

Respectfully submitted,

By: /s/ Michael P. Cooley

Keith M. Aurzada (SBN 24009880)

Michael P. Cooley (SBN 24034388)

Bradley J. Purcell (SBN 24063965)

Lindsey L. Robin (SBN 24091422)

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Attorneys for Vitol Inc.

CERTIFICATE OF SERVICE

I certify that on **September 5, 2022**, a true and correct copy of the forgoing document was served via the Court's Electronic Case Filing (ECF) system to all counsel of record, including counsel for the Defendant.

/s/ Michael P. Cooley
Michael P. Cooley

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

In re:	§	Chapter 7
	§	
ARTHUR JACOB BRASS,	§	Case No. 21-60025
	§ § § § § §	
Debtor.	§	Adversary No. 21-06006
	§ §	

VITOL INC.

v.

ARTHUR JACOB BRASS

PLAINTIFF VITOL INC.'S AMENDED WITNESS AND EXHIBIT LIST

Plaintiff Vitol Inc. (“**Plaintiff**”) hereby submits its Amended *Witness and Exhibit List* for
Trial.

WITNESSES

Plaintiff designates the following individuals who may be called as witnesses:

- (a) Gene Deetz, expert
- (b) Mike Ruzek
- (c) Mike Loya
- (d) Eric Kuo
- (e) James Tolbert
- (f) A.J. Brass
- (g) Chris Murray, as chapter 7 trustee for Gulf Coast Asphalt Company, LLC
- (h) Jason Goldstein
- (i) John Tomaszewski [may be presented by deposition testimony]
- (j) EEPB, PC [unless presented by business records affidavit]
- (k) IberiaBank [unless presented by business records affidavit]
- (l) International Bank of Commerce [unless presented by business records affidavit]
- (m)

- (n) Cadence Bank [unless presented by business records affidavit]
- (o) Chubb Lloyd's Insurance Company of Texas [unless presented by business records affidavit]
- (p) Kevin Boston
- (q) DZ Jewelry, LLC [unless presented by business records affidavit]
- (r) Veritex Community Bank [unless presented by business records affidavit]
- (s) Any witness listed or called by any other party.
- (t) Any witness necessary to rebut the testimony of a witness called or designated by any other party.

Plaintiff reserves the right to call or not call any witnesses designated by any other party, as well as rebuttal witnesses.

EXHIBITS

Plaintiff designates the following exhibits that may be admitted:

No.	Beg. Bates	End Bates	Date	Description	f f e r	A d m i t
<i>Emails</i>						
1	VITOL_00004187	VITOL_00004188	11/17/2016	Email re: GCAC Talking Points (and attachment)		
2	VITOL_00073451	VITOL_00073453	5/10/2017	Email chain re: USGC Asphalt		
3	VITOL_00000791	VITOL_00000791	7/17/2017	Email re Purchase Citgo SHCF		
4	VITOL_00001834	VITOL_00001835	7/21/2017	Email re Summary Truck Report		
5	VITOL_00001836	VITOL_00001836	7/21/2017	Excel attachment to email re Summary Truck Report		
6	VITOL_00001837	VITOL_00001844	7/21/2017	Attachment to Summary Truck Report: presentation to Vitol re GCAC/Rio asphalt business		
7	VITOL_00000379	VITOL_00000379	8/1/2017	Email re Rio Energy Invoice		
8	AJB0003997	AJB0003997	8/1/2017	Email re cash needed		
9	AJB0003960	AJB0003960	8/3/2017	Email re Payroll account		
10	AJB0003984	AJB0003984	8/3/2017	Email re wires did not come in ... need to cover!		
11	AJB0004657	AJB0004657	8/3/2017	Email re payroll account		
12	GCAC004631	GCAC004632	8/15/2017	Email 2 deals		
13	GCAC004666	GCAC004666	8/18/2017	Email re Hedge price		

<u>No.</u>	<u>Beg. Bates</u>	<u>End Bates</u>	<u>Date</u>	<u>Description</u>	<u>O</u> <u>f</u> <u>f</u> <u>e</u> <u>r</u>	<u>A</u> <u>d</u> <u>m</u> <u>i</u> <u>t</u>
14	GCAC004694	GCAC004695	8/21/2017	Email re Interim Financing Structure Bullets (with attachment)		
No.	Beg. Bates	End Bates	Date	Description	O f f e r	A d m i t
15	AJB0005305	AJB0005306	8/21/2017	Email re Interim Financing Structure Bullets AJB (with attachment)		
16	AJB0005448	AJB0005449	8/21/2017	Email re Interim Financing Structure Bullets (with attachment)		
17	VITOL_00000794	VITOL_00000794	8/25/2017	Email re image001		
18	GCAC005167	GCAC005168	9/15/2017	Email re Valt sale out of Rio-mobile		
19	GCAC005427	GCAC005428	9/25/2017	Email re Exxon purchase		
20	GCAC005439	GCAC005444	9/25/2017	Email re 2 deals out of Rio Inventory		
21	GCAC005591	GCAC005593	10/2/2017	Email re GCAC sale to valt out rio inventory		
22	VITOL_00000801	VITOL_00000801	10/11/2017	Email re Sale from GCAC to Gunvor		
23	GCAC005727	GCAC005728	10/11/2017	Email re Sale from GCAC to Gunvor		
24	GCAC005781	GCAC005783	10/16/2017	Email re exxon purchase		
25	Vitol_00001083	Vitol_00001085	10/25/2017	Email re Draft term sheet GCAC		
26	GCAC006121	GCAC006122	11/3/2017	Email re Citgo and Phillips purchases		
27	GCAC006224	GCAC006227	11/16/2017	Email re REVISED Deal recap		
28	AJB0004098	AJB0004100	11/16/2017	Email re Vitol Invoices		
29	GCAC006719	GCAC006719	12/8/2017	Email re Confirmation		
30	GCAC006722	GCAC006724	12/8/2017	Email re Reconciliation 11-28		
31	GCAC006725	GCAC006725	12/8/2017	Excel attachment to Reconciliation 11-28: GCAC/Rio summary		
32	GCAC006726	GCAC006726	12/8/2017	Excel attachment to Reconciliation 11-28: Vitol/Rio/Asphalt deals		
33	VITOL_00004500	VITOL_00004500	12/8/2017	Email re GCAC-Rio Reconciliation		
34	VITOL_00004501	VITOL_00004501	12/8/2017	Excel attachment to Email re GCAC-Rio Reconciliation: reconciliation from GCAC with alleged actual volumes		
35	AJB0004103	AJB0004103	12/15/2017	Email re Wire to Vitol		
36	VITOL_00001726	VITOL_00001727	12/15/2017	Email re Payment		
37	GCAC007237	GCAC007243	1/11/2018	Email re 2 deals out of Rio inventory		
38	VITOL_00000819	VITOL_00000820	1/12/2018	Email re p66 asphalt price		
39	VITOL_00000341	VITOL_00000342	1/16/2018	Email re GCAC-Rio Reconciliation 12-20		
40	VITOL_00000343	VITOL_00000343	1/16/2018	Email re GCAC Rio Reconciliation 12-20		
41	VITOL_00000344	VITOL_00000344	1/16/2018	Excel attachment to Email re GCAC-Rio Reconciliation 12-20		
42	VITOL_00000821	VITOL_00000826	1/19/2018	Email re 2 deals out of Rio Inventory		
43	VITOL_00000827	VITOL_00000827	1/19/2018	Email re Deal 50		
44	VITOL_00002127	VITOL_00002129	1/25/2018	Email re GCAC 1 st Pass Settlement		
45	VITOL_00002130	VITOL_00002130	1/25/2018	Excel attachment: GCAC 1st pass settlement		
46	VITOL_00072820	VITOL_00072822	1/25/2018	Email re GCAC Inspection Reports		
47	AJB0000008	AJB0000008	1/26/2018	Email re Vitol		

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<u>125</u>				<u>Complete deposition of John Tomaszewski and exhibits</u>		

Dated: ~~August 22~~September 5, 2022.

Respectfully submitted,

By: /s/ ~~Keith M. Aurzada~~ Michael P. Cooley

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Michael P. Cooley (SBN 24034388)

Bradley J. Purcell (SBN 24063965)

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Attorneys for Vitol Inc.

CERTIFICATE OF SERVICE

I ~~hereby~~ certify that on ~~August 22~~September 5, 2022, a true and correct copy of the ~~above foregoing~~forgoing document was served via the Court's Electronic Case Filing (ECF) system ~~onto~~ all ~~parties registered to receive electronic service in this matter~~counsel of record, including counsel for the Defendant.

/s/ ~~Keith Miles Aurzada~~ Michael P. Cooley

~~Keith M. Aurzada~~ Michael P. Cooley

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Moved from	0
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Style change	0
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Total changes	96

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

In re:	§	Chapter 7
	§	
ARTHUR JACOB BRASS,	§	Case No. 21-60025
	§	
Debtor.	§	
	§	
<hr/>		
VITOL INC.	§	
	§	
v.	§	Adversary No. 21-06006
	§	
ARTHUR JACOB BRASS	§	

**PLAINTIFF VITOL INC.’S TRIAL BRIEF ON DISCLOSURE OF
CHAPTER 7 TRUSTEE AS A FACT WITNESS REGARDING SCHEDULES**

Counsel for Vitol Inc. (“**Vitol**”) files this trial brief regarding the designation of Christopher Murray, chapter 7 trustee for both the Debtor individually and the Debtor’s bankrupt companies, as a fact witness. In brief, the Rules do not require a party to make duplicative disclosure of information already known to – and indeed disclosed by – an adversary. Accordingly, Vitol respectfully requests the Court overrule the Debtor’s oral objection to Mr. Murray’s testimony and, in support thereof, would respectfully show the Court as follows:

I. INITIAL STATEMENT

1. The Debtor objects to Vitol calling Mr. Murray, the chapter 7 trustee for the Debtor’s own bankruptcy estate and his two bankrupt entities GCAC and Trifinery. The Debtor basis his objection on the so-called failure of Vitol to list the Trustee on its initial disclosures. But the Debtor’s objection that Vitol failed to give proper notice that Mr. Murray was an “individual likely to have discoverable information” should be overruled for two fundamental reasons. First, any failure of Vitol to supplement its initial disclosures a second time was *unnecessary* because

the Trustee was identified *by the Debtor* as the only individual with knowledge of GCAC's financial records just four days before the end of discovery (which deadline was repeatedly extended to accommodate the Debtor). Second, such an error, if it could be called that, is completely *harmless* because the Debtor himself identified the Trustee as the only individual with knowledge of GCAC's financial records (despite the fact that the Debtor was the sole individual in control of GCAC prior to both their chapter 7 bankruptcy filings). The duty to disclose was not on Vitol but on the Debtor. As such, the Debtor cannot now in good faith claim surprise, harm, or prejudice. This brief demonstrates that Vitol had no duty to disclose the Trustee as a witness and has, in fact, satisfied its discovery obligations. Vitol should be allowed to call the Trustee as a witness.

2. The Federal rules of discovery, by design, are calculated to prevent “trial by ambush.” *Shelak v. White Motor Co.*, 581 F.2d 1155 (5th Cir. 1978). “The basic purpose of the [Rule 26] supplementation rule is to prevent prejudice or surprise.” *Reed v. Iowa Marine & Repair Corp.*, 16 F.3d 82, 85 (5th Cir. 1994); *accord, Dilmore, v. Stubbs*, 636 F.2d 966, 969 (5th Cir. 1981) (“The rules of discovery are designed to narrow and clarify the issues and give the parties mutual knowledge of all relevant facts, thereby preventing surprise”). Calling the person that the Debtor identified as having certain knowledge to testify to that knowledge at trial does not amount to ambush and does not prejudice the Debtor; it is what the Debtor instructed Vitol to do.

3. Furthermore, it must be noted that the Court is once again asking Vitol to prove the sufficiency and propriety of its own discovery efforts when it is the Debtor who has abused the process. The Debtor's disingenuous accusations and refusal to properly comply with discovery has—intentionally—caused confusion and delay in the trial of this matter.

4. *First*, the Debtor opposed Vitol's moving to depose Kevin Boston, GCAC's former bookkeeper as untimely when Debtor identified Mr. Boston for the first time during his deposition just four days prior to the close of discovery. Docket No. 53; Docket No. 52. The Debtor accused Vitol of lack of diligence, when in fact it was the Debtor's own failure to identify Mr. Boston as an individual with knowledge was responsible for Vitol's Motion. *See, e.g.*, Debtor's Initial Disclosures at Docket No. 13; *see also* Debtor's Responses to Vitol's Request for Interrogatories.¹ The Court ultimately allowed Vitol to depose John Tomaszewski, GCAC's former CEO, for 2 hours on limited subject matter. Docket No. 52. The Debtor did not list Mr. Boston or Mr. Tomaszewski on his disclosures and he never supplemented his disclosure after his admission during his deposition that they possessed relevant information.

5. *Second*, the Debtor interrupted the deposition of Mr. Tomaszewski with objections to the use of certain financial records in native Microsoft Excel form despite the clear language in the Court's order allowing the use of certain documents *identified* in Vitol's motion to extend the discovery deadline. Docket No. 54, ¶ 2 ("The deposition topics are limited to (i) understanding GCAC financial documents **identified** on Exhibits 3, 7, 8, 9, and 10 to the Motion (the "Documents") . . ."). In support of its objection, the Debtor represented to the Court that Vitol had produced "only a handful" of documents in this adversary proceeding.

6. In response, Vitol credibly demonstrated that it had in fact produced to the Debtor's counsel the documents at issue in the Tomaszewski deposition several months prior. Docket Nos. 61, 62, and 63; Docket No. 100 at FN 9 ("Brass argued in the motion to strike that GCAC 009845 was not produced. Based on Tolbert's testimony and the record, GCAC 009845 was

¹ A true and correct copy of Debtor's Response to Vitol's Requests for Interrogatories is attached as **Exhibit A**. In response to Interrogatory No. 2, which instructed the Debtor to "[i]dentify all individuals that had control over *or access to* GCAC's finances," the Debtor responded: "Arthur Brass and John Tomaszewski."

produced to Brass’s counsel in October 2021.”). In fact, Vitol produced thousands of documents on October 29, 2021 in compliance with the Debtor’s *own request* that Vitol share all of the production from the state court litigation. *See* Docket No. 63. (Such compliance has now earned Vitol accusations by the Debtor of “dumping” documents).

7. At the same time, the Debtor, *without any evidence*, also accused Vitol of *doctoring* the documents used at the deposition of Mr. Tomaszewski. *See e.g.* Docket No. 64, ¶ 29-35. The Debtor had zero evidence to support these serious accusations against Vitol’s counsel and, when Vitol filed a second declaration demonstrating the absence of any change to the substance of the documents [Docket No. 78 at ¶¶ 11-14], the Debtor could not answer that evidence with anything to show otherwise. On the evidence presented, Vitol was vindicated in the Court’s subsequent order concluding that the documents were not doctored or altered in any substantive fashion. Docket No. 100 (“Again, there is no change to the contents of the spreadsheet”). Nevertheless, Vitol was put to significant additional expense to refute the Debtor’s baseless claims.

8. *Third*, on the first day of trial in this adversary proceeding the Debtor again accused Vitol of not previously producing a large quantity of business records during the active discovery process. Once again, Vitol was compelled to assemble records and prepare a supplemental filing to demonstrate that Vitol had in fact produced the documents in question several months earlier. Docket No. 124.

9. *Finally*, on the second day of trial in this adversary proceeding the Debtor also claimed during trial that certain Chubb documents—including the “jewelry rider”—were not timely produced during the active discovery process. *See, e.g.*, Docket No. 126 beginning at 2:32:30 (asking for a ruling on “the fact that it wasn’t produced and not part of discovery in this main case”). As shown in the notice and accompanying declaration of James Tolbert filed

concurrently herewith [Docket No. 137], once again Vitol's allegation is demonstrably false. In fact, Vitol both *noticed* the subpoena in this Adversary Proceeding [Docket No. 22] and *produced* the responsive documents it received from Chubb to Debtor. Specifically, on March 8, 2022, during the discovery period, Vitol produced the documents it received from Chubb in response to its properly-noticed and properly-served subpoena. *See* Docket No. 137, ¶5. Again, it appears Debtor's counsel never downloaded the Chubb documents.

10. Now Vitol once again submits to this Court that it has timely complied with its discovery obligations under the Federal Rules of Civil Procedure, and that the Debtor's objection is merely another attempt to distract this Court from the evidence steadily accumulating in this adversary proceeding in favor of Vitol. The Debtor did not comply with the express rules or spirit of discovery, but is now trying to use those same rules governing discovery as a weapon because the Debtor knows that if Vitol is allowed to present its case using properly identified and disclosed evidence, the \$10 Million judgment against the Debtor will not be discharged.

II. BACKGROUND

11. Defendant Arthur Jacob Brass (the "**Debtor**") filed his chapter 7 bankruptcy on March 26, 2021, four months after the Agreed Judgment was entered resolving the state court litigation between the parties. Gulf Coast Asphalt Company, LLC ("**GCAC**") and Trifinery Inc ("**Trifinery**"), entities controlled by the Debtor, filed bankruptcy petitions under chapter 7 that same day.

12. On March 29, 2021, the Court designated Christopher R. Murray (the "**Trustee**") as the chapter 7 trustee for the Debtor, GCAC, and Trifinery. Main Docket No. 6; Case No. 21-60024, Docket No. 3; Case No. 21-60023, Docket No. 3. The Debtor owned 50% of GCAC through his complete ownership of Trifinery. The Debtor signed both his personal bankruptcy schedules and statement of financial affairs and the bankruptcy schedules and statement of

financial affairs for both GCAC and Trifinery. *See, e.g.*, Main Docket No. 19 at pg. 68 (Vitol Exhibit 90); Case No. 21-60024, Docket No. 11 at pg. 17 (Vitol Exhibit No. 93); Case No. 21-60023, Docket No. 11 at pg. 15 (Vitol Exhibit No. 91).

13. On May 11, 2021, the Debtor appeared at the meeting of the creditors required in each of the three chapter 7 cases pursuant to 11 U.S.C. § 341. The May 11th meeting functioned as a joint meeting of the creditors for the Debtor individually, GCAC, and Trifinery. At this meeting, the Debtor appeared and represented himself in his personal capacity and GCAC and Trifinery as their corporate designee.

14. Vitol filed the above-captioned Adversary Proceeding against the Debtor on July 9, 2021. *See* Docket No. 1. Vitol served its Initial Disclosures to the Debtor's counsel on October 29, 2021 and its First Amended Disclosures on January 28, 2022. Vitol's Initial Disclosures are available at Docket No. 14. A true and correct copy the First Amended Disclosures is attached as **Exhibit B**. After listing each individual Vitol identified as likely to have discoverable information, Vitol also included "All persons identified in documents disclosed by any party herein pursuant to Rule 26(a)(1), in response to request for discovery, attached to pleadings, or otherwise." *See* First Amended Disclosures, ¶ 10.

15. The discovery deadline in this adversary proceeding was extended by a series of scheduling orders culminating in the *Sixth Stipulation and Agreed Order* [Docket No. 49] (the "**Sixth Scheduling Order**"). The Sixth Scheduling Order ordered the Debtor to finally appear for his deposition by March 25, 2022 and extended discovery through March 29, 2022. *See* Docket No. 49, ¶ 1.

16. On Friday, March 25, 2022, after numerous rescheduling accommodations, the Debtor's deposition occurred. During the deposition, the Debtor identified the Trustee in his

capacity as the chapter 7 trustee for GCAC as having possession of GCAC's books and records and directed Vitol's counsel to "go to the trustee."

Q: If you want to define² the books and records of Gulf Coast including an income statement, a balance sheet, and a general ledger, where would you go to find it?

Mr. Patterson: Objection, calls for speculation. We are going to play hide and seek. But if you are really looking for them, go to the trustee. They have possession of everything.

A. The – not having an accountant anymore, if I went to look for something today, I suppose I would have to go to the trustee or get access – have someone get access to the accounting system and print out the balance sheet, the income statements.

Brass Dep. 104:4-16, 25 Mar. 2022. The Debtor later testified that he was not sure when, how, or by whom GCAC's accounting records were transmitted to the Trustee. Brass Dep. 162:8-164:14, 25 Mar. 2022. Fact discovery closed the following Tuesday, on March 29, 2022.

17. Prior to the Debtor's deposition, the Debtor had never previously identified the Trustee on his initial disclosures or otherwise indicated that the Trustee was an individual with discoverable information about GCAC's financial records, although such information would have been specifically responsive to Vitol's discovery requests regarding GCAC's financial documentation. *See* Vitol's First Request for Production of Documents, Request Nos. 4, 5, and 6, attached hereto as **Exhibit C**.

18. After the Debtor's deposition, counsel for Vitol contacted Max Beatty, counsel to the Trustee, to inquire about these documents. Mr. Beatty indicated there was no need to serve a subpoena on the Trustee because the Trustee had received nothing from the Debtor in the GCAC bankruptcy.

² Upon information and belief, the question actually began "If you *wanted to find* the books and records," which is both phonetically similar and consistent with Mr. Patterson's allusion to playing "hide and seek" in response. Vitol's argument stands under either interpretation.

19. On July 8, 2022, the Court set this matter for trial beginning August 30, 2022. *See* Docket Nos. 82 and 84. On August 8, 2022, Vitol filed its notices of trial subpoena which included the subpoena to the Trustee as “Chapter 7 Trustee for Gulf Coast Asphalt Company, LLC.” *See* Docket No. 91-12.

20. On August 22, 2022, Vitol timely filed its witness and exhibit list [Docket No. 101] (the “**W&E List**”). The Trustee is designated as a witness, again in his capacity as the chapter 7 trustee for Gulf Coast Asphalt Company, LLC, on the first page of the W&E List. *See* Docket No. 101, ¶ (g).

21. On the fourth day of this trial on September 2, 2022, the Debtor for the first time objected to the Trustee as a witness in this adversary proceeding.³ The Debtor did not file an objection to Vitol’s witness list or a motion in limine relating to the Trustee’s testimony. The sole stated basis of the Debtor’s objection is that the Trustee was not identified on Vitol’s initial disclosures (or any supplement) required under Fed. R. Civ. P. 26(a)(1) and 26(e).

22. Vitol submits this trial brief in support of its use of the Trustee as a fact witness and, more generally, its use of both witnesses and evidence that Debtor’s counsel was aware of, or should have been aware of, both through discovery and in writing, as allowed by Federal Rule of Civil Procedure 26(e)(1).

III. ARGUMENTS AND AUTHORITIES

23. It is a strange reading of the Rules of Civil Procedure that puts Vitol in the position of having to defend the use of witnesses that the Debtor himself identified as having potentially relevant information. Specifically, the Debtor *himself* identified the Trustee as a party with

³ Since the exchange of witness and exhibit lists on August 22, 2022, counsel for Vitol has made repeated attempts to discuss objections and stipulations to witnesses and exhibits. Counsel for the Debtor has refused all such attempts and—consistent with counsel’s courtroom statements—affirmed their intention to reserve all such objections for trial.

discoverable information relating to GCAC's financial information during the course of his deposition. Vitol is entitled to rely on the Debtor's testimony, and the Debtor's own testimony is notice as required under Rule 26.⁴

24. The Debtor's assertion that any evidence or witnesses that have not been formally supplemented pursuant to Federal Rule of Civil Procedure 37(c) must be excluded ignores the express language of the Rule. Rule 37(c) specifically does not extend to alleged failures of disclosure where "*the failure was substantially justified or is harmless.*" Fed. R. Civ. P. 37(c) (emphasis added). Here, Vitol was not required to supplement its initial disclosures pursuant to Federal Rule of Civil Procedure 26(e) when the Debtor and his counsel identified the Trustee during the Debtor's deposition.

A. Rule 26(a)(1) governs initial disclosures

25. Rule 26(a)(1) enumerates four categories of information that parties are required to disclose at the outset of an adversary proceeding "without awaiting a discovery request," including the names of "each individual likely to have discoverable information." Fed. R. Civ. P. 26(a)(1)(A)(i).

26. Although the Debtor apparently knew the Trustee was the only individual with knowledge of GCAC's books and records since March 29, 2021 when the Trustee was appointed, the Debtor did not identify the Trustee in his initial disclosures or his responses to written discovery. In fact, the Debtor did not identify the Trustee until March 25, 2022—as it happens, the same date the Debtor first identified Kevin Boston as a potentially relevant witness, and refused

⁴ As briefed to the Court previously, the relevance of GCAC's financial information is for Vitol to pursue an exception to discharge under the *Husky* case in that the Debtor orchestrated the transfer of funds from his closely held company as the expense of Vitol.

to provide Mr. Boston's telephone number to counsel. After the March 25, 2022 deposition, the Debtor did not supplement his disclosures.

B. Rule 26(e)(2) imposes no duty to supplement where the other party already knows the information

27. The obligation to supplement under Rule 26(e)(1)(A) is not an absolute one, but one that arises “if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.” Fed. R. Civ. P. 26(e)(1)(A). Therefore, there is no duty to supplement the designation of the Trustee as a fact witness because the Trustee's relevant knowledge had “otherwise been made known” in accordance with Rule 26(a)(3) by the Debtor's own testimony.

28. To that end, courts have consistently reiterated the limitations of the obligation to supplement under Rule 26(e)(1). “[C]ourts have declined to exclude evidence or witnesses where the opposing party knew or should have known of an exhibit and its contents or the identity of a person and the scope of her testimony well before trial.” *Drechsel v. Liberty Mut. Ins. Co.*, 2015 U.S. Dist. LEXIS 153336, at *5-6 (N.D. Tex. Nov. 12, 2015) (citing *Kellogg Brown & Root Int'l, Inc. v. Altanmia Commercial Marketing Co. W.L.L.*, Civ. A. No. H-07-2684, 2008 U.S. Dist. LEXIS 97855, at *45-47 n.22 (S.D. Tex. Dec. 3, 2008)). “A party is not required to supplement its discovery if the additional or corrective information has ‘otherwise been made known to the other parties during the discovery process or in writing[.]’” *In re Sambrano*, 440 B.R. 702, 707 (Bankr. W.D. Tex. 2010) (citing Fed. R. Civ. P. 26(e) and *Barker v. Bank One, N.A.*, 2005 U.S. Dist. LEXIS 19449, at *3 (N.D. Tex. Sept. 7, 2005) (finding that defendant was not required to supplement its discovery by identifying as witnesses individuals the plaintiff had deposed during discovery); 8 Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. 3d § 2049.1 (West 2010)); *see also* 8A Wright, Miller, & Marcus, Federal Practice and Procedure, § 2049.1 at p. 313

(2019 supp.) (the analysis of whether a disclosure violation occurred is a “pragmatic” one, “[t]he focus is on the pragmatic question whether sufficient and timely correction was made.”); *Bankston v. Kan. City Southern Ry.*, No. 03 Civ. 577 (CN), 2005 U.S. Dist. LEXIS 50783, 2005 WL 8155221, at *4 (M.D. La. Oct. 17, 2005) (“[T]he duty to supplement imposed by [FRCP] 26(e) should not require form over substance in this case.”). Once again, the Debtor’s objection here is entirely form over substance.

29. Vitol had no *obligation* to update its disclosures to identify the Trustee, because the Debtor (and his counsel) knew the Trustee’s identity and the likely scope of his testimony long before trial. Indeed, after refusing to produce his own company’s business records or authenticate them during his deposition, it was the Debtor’s counsel who noted that the financial records were with the Trustee. Because the Debtor’s counsel notified Vitol that the Trustee had discoverable information regarding GCAC’s financial records, any such supplementation would have been precisely the sort of duplicative and wasteful exercise that courts have emphasized is *not* the purpose of the rule. *See, e.g., Reed*, 16 F.3d at 85 n.8 (“Indeed supplemental [interrogatory] responses herein, in light of Reed’s deposition admissions, might largely be viewed as a duplicative, wasteful exercise.”).

C. If the Rules did require Vitol to supplement its initial disclosures to identify the Trustee, any failure to do so was harmless

30. If the Court determines Vitol were under an obligation to supplement its initial disclosures to include the Trustee, such failure to do so is harmless given the Debtor himself identified the Trustee as the person having such information.

31. In determining whether a failure to supplement is harmless under Rule 37(c), the court examines “(1) the importance of the evidence; (2) the prejudice to the opposing party of including the evidence; (3) the possibility of curing such prejudice by granting a continuance; and

(4) the explanation for the party’s failure to disclose.” *Lundy Enters. v. Wausau Underwriters Ins. Co.*, 2010 U.S. Dist. LEXIS 157930, at *5 (E.D. La. Jan. 21, 2010) (plaintiff not permitted to introduce evidence in support of its damages claim when that claim was first identified at a deposition 24 months after a discovery request seeking such information); *Tex. A&M Research Found. v. Magna Transp., Inc.*, 338 F.3d 394, 401-402 (5th Cir. 2003) (failure to amend discovery to disclose invoices was harmless because “the prejudice to the adverse parties was negligible” given that the witness testifying in support of the invoices was properly designated as a witness prior to trial and any prejudice was cured by the one month given to the adverse parties to examine and respond to the contested evidence); *Schinabeck v. Wells Fargo Bank, N.A. (In re Schinabeck)*, 2014 Bankr. LEXIS 4444, at *13-15 (Bankr. E.D. Tex. Oct. 20, 2014) (“it could be persuasively argued that no supplementation [of Defendant’s interrogatories] was needed here at all under Rule 26 (e)(1)(A) due to information tendered by the Defendant during the discovery process.”); *Dilmore*, 636 F.2d at 969 n2.

32. Here, the Trustee’s testimony is important because it will highlight a glaring contradiction in the Debtor’s story that goes to the crux of this proceeding. When confronted with numerous transfers from GCAC to or for the benefit of himself and his mother, the Debtor has consistently sought to characterize the transfers as loans and deferred to the Trustee as the person who has “possession of everything.” Upon information and belief, the Trustee will testify that he never received any documents from the Debtor and will further testify that GCAC’s own bankruptcy schedules do not identify *any* loans owed by the Debtor or his mother as assets of GCAC. This evidence is a crucial part of the evidence necessary to establish the badges of fraud underpinning Vitol’s *Husky* claim.

33. If Vitol were not able to demonstrate these Transfers, Vitol's case against the Debtor would be prejudiced.

34. To the extent necessary, Vitol is willing to agree to a continuance to allow the Debtor to depose the Trustee or take whatever discovery the Debtor needs to identify the information that the Trustee received from the Debtor regarding the Debtor's bankrupt companies. However, Vitol submits that no such continuance is necessary given that the Debtor has already declined the opportunity to depose the Trustee during the active discovery process.

35. Vitol did not supplement its initial disclosures to disclose the identity of the Trustee because the Debtor himself had already demonstrated awareness of the Trustee's existence and potential relevance. Vitol believed that the Debtor's testimony instructing Vitol to seek the desired information from the Trustee adequately made the Debtor aware of that information. The Debtor was not harmed by Vitol not listing the Trustee on its disclosures.

D. Vitol should not be punished for the Debtor's continuous and intentional failure to disclose the Trustee as an individual with "discoverable information" until four days before discovery closed.

36. The 1983 Advisory Committee Notes to Rule 26 make clear that the purpose of discovery is to provide a mechanism for making relevant information available to the litigants. Fed. R. Civ. P. 26 Advisory Committee's Note (1983). "Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation." *Id.* citing to *Hickman v. Taylor*, 329 U.S. 495, 507 (1947). "Thus the spirit of the rules is violated when advocates attempt to use discovery tools as *tactical weapons* rather than to expose the facts and illuminate the issues by overuse of discovery or unnecessary use of defensive weapons or evasive responses." *Id.* (emphasis added). "All of this results in excessively costly and time-consuming activities that are disproportionate to the nature of the case, the amount involved, or the issues or values at stake." *Id.*

37. As the Plaintiff, Vitol bears the burden of establishing its case. Vitol is ready and prepared to meet that burden. But Vitol does not – and *should* not – bear the burden of disclosing information in discovery that is unknown to Vitol and that the Debtor and his counsel continuously concealed despite Debtor’s ongoing obligation to disclose it. Excluding the Trustee would reward Debtor for concealing relevant facts.

CONCLUSION

38. Once again, Defendant’s oral objection to testimony is calculated to distract the Court from the merits of this adversary proceeding, to prevent this Court from seeing the compelling evidence that supports Vitol’s claims, and to drive up the expense of litigating this case. To exclude the chapter 7 Trustee as a fact witness is not consistent with the rules which are designed to avoid unfair surprise or prejudice, not require duplicative reproduction of information already known to an adversary. Accordingly, Vitol requests that this Court overrule the Defendant’s objection, allow Vitol to present the Trustee as a witness in this case, and for any such other and further relief, at law or in equity, to which Vitol may show itself to be justly entitled.

Dated: **September 5, 2022**

Respectfully submitted,

By: /s/ Michael P. Cooley

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Attorneys for Vitol Inc.

CERTIFICATE OF SERVICE

I certify that on **September 5, 2022**, a true and correct copy of the forgoing document was served via the Court's Electronic Case Filing (ECF) system to all parties registered to receive electronic notices in this adversary proceeding, including counsel for the Defendant.

/s/ Michael P. Cooley

Michael P. Cooley

IN THE UNITED STATES BANKRUPTCY COURT
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	§	Case No. 21-60025
Debtor.	§	
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VITOL INC.	§	
	§	
v.	§	Adversary No. 21-06006
	§	
ARTHUR JACOB BRASS	§	

DEFENDANT'S RESPONSES TO VITOL'S
FIRST SET OF INTERROGATORIES TO
DEBTOR

INTERROGATORY NO. 1: Describe in detail Your duties as president of GCAC.

RESPONSE: I had general management responsibility for GCAC strategy, long-term planning, financial matters, and general employment issues.

INTERROGATORY NO. 2 Identify all individuals that had control over or access to GCAC's finances.

RESPONSE: Arthur Brass and John Tomaszewski

INTERROGATORY NO. 3 For all individuals identified under Interrogatory No. 2 identify the source of authority to control GCAC's finances and what control was exercised.

RESPONSE: The source of these individuals authority is their agency relationship with GCAC. Arthur Brass had control and access to all of GCAC's finances. John Tomaszewski had signatory authority at Iberia Bank. John Tomaszewski's authority was limited to acting as signatory at Arthur Brass direction.

INTERROGATORY NO. 4: Identify each payment, transfer, loan, salary, wage, distribution, or other money You received from GCAC.

RESPONSE: See attached spreadsheet for payments from 3-17-2017 through 10-29-2019.

INTERROGATORY NO. 5: How much money did GCAC transfer to You or for Your benefit.

RESPONSE: See Response to Interrogatory #4

INTERROGATORY NO.6: Identify each payment, transfer, loan, salary, wage, distribution, or other money your wife received from GCAC.

RESPONSE: See attached. Mr. Brass allocated a portion of his salary to be direct deposited to his wife convenience purposes to be used for general household expenses.

INTERROGATORY NO.7: Identify each payment, transfer, loan, salary, wage, distribution, or other money your mother received from GCAC.

RESPONSE: See attached, Debtor produced all information within his possession.

INTERROGATORY NO. 8: Identify each payment, transfer, loan, salary, wage, distribution, or other money your sister received from GCAC.

RESPONSE: All payments made by GCAC to the Debtor's sister were made on behalf of their mother. Therefore, the spreadsheet responsive to Interrogatory #7 includes all payments.

INTERROGATORY NO. 9: Identify the date, amount, and purpose of all funds GCAC received from third parties for the sale of asphalt and other commodities.

RESPONSE: See attached

INTERROGATORY NO. 10: Identify the date, amount, and purpose of all funds you allege GCAC paid to Vitol.

RESPONSE: Attached

INTERROGATORY NO. 11: Identify the sources of working capital for GCAC.

RESPONSE: GCAC did not have any bank loans for working capital during this period of time. GCAC received funds from 1); cash on hand; 2) loans from shareholders; and 3) proceeds from sales of product.

INTERROGATORY NO. 12: Describe in detail the factual basis for your contention that GCAC was not insolvent during the pendency of its relationship with Vitol, as set forth in paragraph 6 of your Answer.

RESPONSE: GCAC had an ongoing business that was valuable and worth more than its obligations.

Dated: _____

I declare under penalty of perjury that the information, statements and facts given above are true and correct to the best of my knowledge.



Arthur J. Brass

**IN THE UNITED STATES BANKRUPTCY COURT
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	§	
ARTHUR JACOB BRASS	§	

PLAINTIFF VITOL INC.'S FIRST AMENDED INITIAL DISCLOSURES

Pursuant to Rule 26(a) of a Federal Rules of Civil Procedure, made applicable to this Adversary Proceeding under Rule 7026 of the Federal Rules of Bankruptcy Procedure, Plaintiff Vitol Inc. (the “**Vitol**” or “**Plaintiff**”) files its First Amended Initial Disclosures as follows. These disclosures are based on information reasonably available to Vitol as of the date of this filing. Vitol does not represent that it is identifying every document, individual, or piece of evidence possibly relevant to this lawsuit, nor does Vitol waive any right to object to production of any document or other evidence on the basis of any privilege, the work product doctrine, relevancy, undue burden, or any other valid basis. Vitol reserves its right to supplement and/or amend these disclosures to the extent additional documents and/or information may be discovered.

I. Individuals.

Pursuant to Rule 26(a)(1)(A)(i), Vitol discloses the following individuals likely to have discoverable information. With respect to Vitol or its employees, all contact should be only through Vitol’s undersigned attorneys.

1. Eric Kuo
c/o Keith M. Aurzada
Reed Smith LLP
2850 N. Harwood Street, Ste. 1500
Dallas, TX 75201
T: 469.680.4211
Mr. Kuo has general knowledge of the business relationship between Vitol and GCAC and interacted with Defendant Brass during the pendency of that relationship.
2. Mike Ruzek
c/o Keith M. Aurzada
Reed Smith LLP
2850 N. Harwood Street, Ste. 1500
Dallas, TX 75201
T: 469.680.4211
Mr. Ruzek has general knowledge of the business relationship between Vitol and GCAC and interacted with Defendant Brass during the pendency of that relationship.
3. Mike Loya
c/o Keith M. Aurzada
Reed Smith LLP
2850 N. Harwood Street, Ste. 1500
Dallas, TX 75201
T: 469.680.4211
Mr. Loya has general knowledge of the business relationship between Vitol and GCAC and interacted with Defendant Brass during the pendency of that relationship.
4. Tom Moran
c/o Keith M. Aurzada
Reed Smith LLP
2850 N. Harwood Street, Ste. 1500
Dallas, TX 75201
T: 469.680.4211
Mr. Moran has general knowledge of the business relationship between Vitol and GCAC and interacted with Defendant Brass during the pendency of that relationship.
5. Patrick Perugini
Address unknown
Mr. Perugini worked for the Debtor at GCAC and had knowledge of his appropriating funds properly due to Vitol.

6. A.J. Brass
c/o Miriam Goott
Walker & Patterson P.C.
P.O. Box 61301
Houston, TX 77208
T: 713.956.5577
As the Defendant and the Debtor, Mr. Brass has personal knowledge of his misrepresentations and frauds committed against Vitol.
7. Catherine Mattingly Brass
2508 Pelham Dr.
Houston, TX 77019
As the wife of the Debtor, Catherine Brass may have knowledge of Debtor's finances and his use of company funds to support their lifestyle and the transfer of proceeds from the Hockley House to her personal bank accounts.
8. Joyce Brass
2508 Pelham Dr.
Houston, TX 77019
As the co-owner of GCAC, Joyce Brass should have knowledge of the Debtor's use of company funds and the undocumented loans transferred to her personal accounts.
9. Sandra Brass
Address unknown
Sandra Brass should have knowledge of the alleged loan transferred to her personal accounts.
10. All persons identified in documents disclosed by any party herein pursuant to Rule 26(a)(1), in response to requests for discovery, attached to pleadings, or otherwise.
11. Vitol reserves the right to supplement these disclosures consistent with the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure.

II. Documents.

Vitol believes that it has produced all relevant documents responsive to Debtor's requests.

III. Computation of Damages.

Vitol seeks to prevent Debtor from discharging at least \$10 million in obligations owed to Vitol arising from Debtor's conduct. In the state-court litigation, Vitol asserted damages of at least

\$14,793,974 arising from Debtor's conduct. Debtor and Vitol entered an Agreed Judgment in the state-court litigation for \$10 Million as part of a settlement of Vitol's claims.

IV. Insurance Agreements.

Rule 26(a)(1)(D) requires production of "any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment." Vitol is unaware of any insurance agreement fitting this description.

January 28, 2022.

Respectfully submitted,

By: /s/ Keith M. Aurzada

Keith M. Aurzada (SBN 24009880)

Lindsey L. Robin (SBN 24091422)

REED SMITH LLP

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Dallas, Texas 75201

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F: 469.680.4299

kaurzada@reedsmith.com

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and

Michael H. Bernick (SBN 24078277)

Mason W. Malpass (SBN 24109502)

REED SMITH LLP

811 Main Street, Suite 1700

Houston, TX 77002

T: 713.469.3834

F: 713.469.3899

mbernick@reedsmith.com

mmalpass@reedsmith.com

Attorneys for Vitol Inc.

CERTIFICATE OF SERVICE

I certify that on **January 28, 2022** a true and correct copy of the foregoing document was served on Defendant's counsel *via email*.

/s/ Keith M. Aurzada

Keith M. Aurzada

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

In re:	§	Chapter 7
	§	
ARTHUR JACOB BRASS,	§	Case No. 21-60025
	§	
Debtor.	§	
	§	
<hr/>		
VITOL INC.	§	
	§	
	§	
v.	§	Adversary No. 21-06006
	§	
ARTHUR JACOB BRASS	§	

PLAINTIFF VITOL INC.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Defendant Arthur Jacob Brass, by and through his counsel of record, WALKER & PATTERSON, P.C., Miriam Goott, P.O. Box 61301, Houston, TX 77208.

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, made applicable to this proceeding through Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) 9014 and 7034, Plaintiff Vitol Inc. serves the following *First Requests for Production of Documents* (each, a “**request**”) as attached hereto as **Exhibit A** on Defendant. Defendant is instructed to respond to these Requests in writing and produce documents no later than **December 3, 2021**. Plaintiff requests that Defendant supplement his answers as may be necessary and appropriate.

Dated: November 3, 2021.

Respectfully submitted,

By: /s/ Keith M. Aurzada
Keith M. Aurzada
State Bar No. 24009880
Lindsey L. Robin
State Bar No. 24091422
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Dallas, Texas 75201
T: 469.680.4200
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kaurzada@reedsmith.com
lrobin@reedsmith.com

and

Michael H. Bernick
State Bar No. 24078277
Mason W. Malpass
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REED SMITH LLP
811 Main Street, Suite 1700
Houston, TX 77002
T: 713.469.3834
F: 713.469.3899
mbernick@reedsmith.com
mmalpass@reedsmith.com

Counsel to Plaintiff Vitol, Inc.

CERTIFICATE OF SERVICE

I certify that on November 3, 2021, a true and correct copy of the foregoing document was served on Defendant's counsel of record *via email*.

Miriam Goott
State Bar No. 24048846
WALKER & PATTERSON, P.C.
P.O. Box 61301
Houston, TX 77208
T: 713.956.5577
F: 713.956.5570
mgoott@walkerandpatterson.com

/s/ Keith M. Aurzada

Keith M. Aurzada

EXHIBIT A

INSTRUCTIONS

1. In answering these Requests, you are to be guided by these Instructions and the Definitions provided below.
2. Each Request is addressed to Defendant, along with any person or entity acting on behalf of Defendant, including any officer, director, employee, agent, representative, investigator, consultant, or attorney of Defendant.
3. In answering each Request, furnish all information and documents available to you, including information and documents in the possession of your agents, representatives, employees, investigators, attorneys, or anyone acting on their behalf or on your behalf, and not merely such information within your personal knowledge.
4. These discovery requests are continuing in nature until the date of the trial or other final resolution of this matter, and you are requested to supplement your responses as additional information may become available to you. Such supplemental responses shall be served within a reasonable time after the occurrence of the events necessitating the supplemental response. In addition, you are under a duty to amend any response to these requests if you obtain information or documents which indicate that your prior response was incorrect when made or that the response, though correct or complete when made, is no longer correct or complete.
5. If you object to any part of these discovery requests, these instructions, or the definitions below, please state the nature of your objection with sufficient specificity so that the parties, if possible, can resolve their differences with respect to the request without involving the Court.
6. If you claim that the attorney-client or other privilege or the work product doctrine is applicable to any document the identification of which is sought by these requests, then with respect to each such document (a) identify the privilege, doctrine or other protection you claim; (b) identify the document's date, author(s), addressee(s), copy addressee(s) and others to whom the document was disclosed, and their position (e.g., employee, in-house attorney or outside legal counsel); (c) identify the type and subject or heading of the document; and (d) provide a description of the document's subject matter sufficient to permit adjudication of your privilege claim.
7. These discovery requests are continuing in nature until the date of the trial or other final resolution of this matter, and you are requested to supplement your responses as additional information may become available to you. Such supplemental responses shall be served within a reasonable time after the occurrence of the events necessitating the supplemental response.
8. As to all documents that are responsive to this request but that were lost or destroyed, you are requested to identify each such document by date, author(s), recipient(s), and subject matter and to describe how the document was lost or destroyed.
9. **Time Period.** Unless otherwise specified, the relevant time period for these requests is from January 1, 2017 through the present.

DEFINITIONS

The following Definitions apply to these Requests:

1. **“Document” or “documents”** shall be used in their broadest sense and shall mean any tangible thing upon which any expression, communication, data or representation has been recorded by any means including, but not limited to, handwriting, typewriting, printing, photostating, electronic mail (e-mail), electronically stored information (“ESI”), photographing, magnetic impulse, or mechanical or electronic recording and any non-identical copies (whether different from the original because of notes made on such copies, because of indications that said copies were sent to different individuals than were the originals, or because of any other reason), including but not limited to working papers, preliminary, intermediate or final drafts, correspondence, memoranda, charts, notes, records of any sort of meetings, invoices, financial statements, financial calculations, diaries, reports of telephone or other oral conversations, desk calendars, appointment books, audio or video tape recordings, microfilm, microfiche, computer tape, computer disk, computer printout, computer card, and all other writings and recordings of every kind that are in your actual or constructive possession, custody, or control.

2. **“ESI” or “Electronically Stored Information”** includes, without limitation, the following: (a) structured and unstructured data, as those terms are defined in The Sedona Conference Glossary, available at www.thesedonaconference.org/publications; (b) activity listings of electronic mail receipts and/or transmittals; (c) output resulting from the use of any software program, including, without limitation, word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail, instant messaging programs and applications (e.g., AOL Instant Messenger, Blackberry Messenger, Google Talk, Windows Live Messenger, and iChat), text-messaging programs or applications, or bulletin board programs, operating and backup systems, source code, PRF files, PRY files, batch files, ASCII files, and all miscellaneous media on which they reside and regardless of whether said electronic data exists in an active file, a backup file or system, a deleted file or system, or file fragment; (d) any and all items stored on computer memories, hard disks, floppy disks, clouds, memory sticks, SD cards, CD-ROM, magnetic tape, microfiche, or in any other vehicle for digital data usage, storage or transmittal, such as, but not limited to, desktop computers, servers and other network computers, backup tapes or systems, laptop computers, tablets (e.g., iPads), home or personal computers used for business purposes, cellphones, smartphones, personal digital assistants, or similar devices running mobile operating systems, including such devices owned by your Employees and used in any way for business purposes, external storage devices (such as “keychain” drives) and file folder tabs, or containers and labels appended to or relating to any physical storage device associated with each original or copy of all Documents requested herein; (e) any and all content stored on voicemail systems, websites, company intranet sites, chat rooms and social networking websites (e.g., Facebook, LinkedIn, Twitter and social network websites, including those listed at http://en.wikipedia.org/wiki/List_of_social_networking_websites); and (f) any and all data, data compilations, and data analyses.

3. **“Communication” or “Communications”** shall mean any written, oral, or electronic conversation, meeting, contact, promise, representation, exchange or inducement of which you have any knowledge or information, whether internal or external.

4. The terms “**concerning**,” “**relating to**,” “**regarding**,” “**reflecting**,” and “**referring to**” shall mean constituting, evidencing, mentioning, describing, pertaining to, responding to, used or relied on in preparation of or in conjunction with, or being connected with in any way, either directly or indirectly.

5. “**Any**” or “**each**” should be understood to include and encompass “all”; “**or**” should be understood to include and encompass “and”; and “**and**” should be understood to include and encompass “or.”

6. The term “**including**” should be understood to encompass “but not limited to.”

7. “**Describe in detail**” means to state each and every fact concerning the information requested by the Interrogatory, including, without limitation, (a) the identity of each person having knowledge of each fact or opinion relating to the information requested, (b) the identity of each document reflecting or relating to the information requested, (c) the identity of all communications relating to the information requested, and (d) all relevant date and time periods.

8. “**State the basis**” means to state with specificity all facts supporting, contradicting, or otherwise relating to the subject matter of the interrogatory, and to identify all communications or documents relating to such facts, and all persons likely to have knowledge of such facts.

9. “**Person**” shall mean any natural person, firm, corporation, partnership, joint venture or any form of business entity or other organization.

10. “**You**,” “**Your**,” “**Debtor**,” or “**Defendant**” shall refer to Defendant Arthur Jacob Brass and includes his affiliates, related entities, successors, assigns, employees, representatives, investigators, agents, or attorneys; provided, however, that if the context of a discovery request indicates that inclusion of “attorneys” in the foregoing terms would require the production of information protected from discovery, then such discovery requests should be answered with an understanding that the foregoing terms do not include “attorneys.”

11. “**GCAC**” means Gulf Coast Asphalt Company, LLC, its successors, predecessors, divisions, subsidiaries, present and former officers, agents, employees, and all other persons acting on behalf of defendant or its successors, predecessors, divisions, and subsidiaries.

12. “**Trifinery**” means Trifinery, Inc., its successors, predecessors, divisions, subsidiaries, present and former officers, agents, employees, and all other persons acting on behalf of defendant or its successors, predecessors, divisions, and subsidiaries.

13. “**Plaintiff**” or “**Vitol**” shall mean Plaintiff Vitol Inc. including its affiliates, related entities, employees, representatives, investigators, agents, or attorneys.

14. “**Petition Date**” shall mean March 26, 2021.

15. “**Complaint**” shall mean the *First Amended Complaint to Determine Dischargeability of Debts* filed by Vitol at Docket No. 10.

16. “**Answer**” shall mean the *Answer to Amended Complaint filed by Vitol, Inc.* filed by Debtor as Adv. Docket No. 11.

17. “**General Ledger**” means the data from GCAC’s record keeping system for tracking GCAC’s transactional and financial data, including subledgers or subsets.

18. “**Byer Builders**” means Byer Builders, Inc. and all its successors, predecessors, divisions, subsidiaries, present and former officers, agents, employees, and all other persons acting on behalf of defendant or its successors, predecessors, divisions, and subsidiaries.

19. The “**Hockley House**” means the entire property and any and all fixtures located at 14 Lakeside Ln., Hockley, TX 77447.

20. The use of the singular herein also includes the plural, the masculine and the feminine, as appropriate in the context. The use of any tense of any verb shall include also within its meaning all other tenses of the verb. Any capitalized term used but not defined herein has the meanings assigned to them in the Complaint.

REQUESTS FOR PRODUCTION

1. All correspondence between You and third parties to whom GCAC sold asphalt and other commodities.

2. All documents evidencing the ownership and management structures of GCAC and Trifinery.

3. All documents evidencing all individuals with authority over or access to GCAC’s finances.

4. All documents evidencing GCAC’s and Trifinery’s sources of working capital.

5. All documents evidencing GCAC’s financial condition, including documents evidencing its solvency, if any, from January 1, 2017 to the Petition Date.

6. All documents evidencing GCAC’s financial condition, including documents evidencing its solvency, if any, on June 30, 2017.

7. All documents evidencing GCAC paying for expenses or liabilities incurred by Vitol.

8. All documents evidencing each payment, transfer, loan, salary, wage, or other money You received from GCAC.

9. All documents evidencing each payment, transfer, loan, salary, wage, or other money your wife received from GCAC.

10. All documents evidencing each payment, transfer, loan, salary, wage, or other money your mother received from GCAC.

11. All documents relating to the sale of the Hockley House, including documents evidencing the sale price, the date of sale, and where the proceeds from the sale were directed.

12. All documents evidencing transfers you made to your wife, including bank statements.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE	§	
	§	CASE NO. 21-60025
	§	
ARTHUR J. BRASS	§	
DEBTOR	§	
	§	
VITOL INC.	§	ADVERSARY NO. 21-06006
Plaintiff	§	
v.	§	
	§	
ARTHUR J. BRASS	§	
Defendants	§	

DEFENDANT’S RESPONSE TO VITOL’S BRIEF

COMES NOW, Arthur J. Brass (“Debtor”) and files this Response to Vitol’s Brief filed at Docket No. 138.

TESTIMONY OF CHRISTOPHER R. MURRAY, CHAPTER 7 TRUSTEE

1. During trial, Vitol called Christopher R. Murray, to testify as a fact witness.
2. Mr. Murray is the Chapter 7 Trustee for the Debtor and GCAC, and has been the Trustee since these bankruptcy cases were filed more than one year ago.
3. The Debtor objected to Vitol calling Mr. Murray as a witness because Vitol never identified Mr. Murray as a witness in its Initial Disclosures as required by Rule 7026(a).
4. As a result, Mr. Murray did not testify.
5. Subsequently, Vitol filed a brief attempting to explain why Mr. Murray should be allowed to testify and why Vitol is not required to comply with the rules regarding disclosure (the, “**Brief**”).
6. In summary, Vitol argues that the Debtor was unable to answer questions about GCAC’s financial documents during his deposition, and that Vitol’s counsel **first** learned that Mr. Murray, the Chapter 7 Trustee for GCAC, was the individual who would have discoverable information about GCAC and its finances, during this deposition (the, “**Deposition**”).
7. The Deposition occurred on March 25, 2022.

DEBTOR'S RESPONSE

8. First, Vitol is a creditor in the GCAC bankruptcy case and was well aware that Mr. Murray was the Chapter 7 Trustee for GCAC before it filed its lawsuit against the Debtor.
9. Second, Vitol filed its Initial Disclosures in the Adversary long after the GCAC bankruptcy was filed and did not disclose Mr. Murray.
10. Third, Vitol propounded written discovery on the Debtor and never asked who was in possession of GCAC's financial documents – the very same documents that Vitol now suddenly claims are so crucial to their case. *See Exhibit A*
11. Fourth, GCAC never amended its Initial Disclosures.
12. Fifth, Vitol alleges that its counsel first learned on March 25, 2022, that Mr. Murray is the individual with information about GCAC. However, Vitol never filed a Motion asking this Court to reopen discovery to depose Mr. Murray and never served Mr. Murray with a subpoena to produce relevant documents.
13. Instead, Vitol waited until the week before trial to notify the Debtor that he intended to call Mr. Murray as a witness at trial.

VITOL'S INCREDULOUS ARGUMENT

14. More fundamentally, Vitol's argument that its counsel first learned that the Chapter 7 Trustee for GCAC would be the one with information about GCAC, borders on frivolous and disingenuous.
15. Vitol's counsel are sophisticated bankruptcy attorneys who should know that a Chapter 7 Trustee is precisely the person who would have possession of financial information about a corporate Debtor.
16. According to Reed Smith's website, Mr. Cooley's practice is centered on matters of federal bankruptcy law and that Mr. Cooley authored 26 original chapters on procedural rules governing bankruptcy litigation.
17. There is absolutely no explanation provided by Vitol that would explain why Mr. Murray was not disclosed in its Initial Disclosures. Furthermore, Vitol never provided the Debtor with informal notice that it intended to call Mr. Murray as a witness at trial.

THE RULES

18. There is not one ounce of doubt that Rule 26(a)(1)(A) and Rule 37(c) require disclosure of witnesses that will testify at trial, and that failure to identify a witness prohibits their testimony.
19. There is also not one ounce of doubt that Vitol failed to disclose Mr. Murray as required by the Rules.
20. Vitol's counsel is asking this Court to ignore the rules and focus on limited exceptions to rules. Once again, Vitol takes no responsibility for its continued failure to comply with basic pretrial disclosure requirements.

Dated: September 6, 2022

Respectfully submitted,

By: /s/ Miriam Goott

Miriam Goott
SBN#24048846
COUNSEL FOR DEBTOR

OF COUNSEL:
WALKER & PATTERSON, P.C.
P.O. Box 61301
Houston, TX 77208-1301
(713) 956-5577
(713) 956-5570 (fax)
mgoott@walkerandpatterson.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

In re:	§	Chapter 7
ARTHUR JACOB BRASS,	§	Case No. 21-60025
Debtor.	§	
	§	
	§	
	§	
	§	
VITOL INC.	§	
v.	§	Adversary No. 21-06006
ARTHUR JACOB BRASS	§	
	§	

**DEFENDANT'S RESPONSES TO VITOL'S
FIRST SET OF INTERROGATORIES TO
DEBTOR**

INTERROGATORY NO. 1: Describe in detail Your duties as president of GCAC.

RESPONSE: I had general management responsibility for GCAC strategy, long-term planning, financial matters, and general employment issues.

INTERROGATORY NO. 2 Identify all individuals that had control over or access to GCAC's finances.

RESPONSE: Arthur Brass and John Tomaszewski

INTERROGATORY NO. 3 For all individuals identified under Interrogatory No. 2 identify the source of authority to control GCAC's finances and what control was exercised.

RESPONSE: The source of these individuals authority is their agency relationship with GCAC. Arthur Brass had control and access to all of GCAC's finances. John Tomaszewski had signatory authority at Iberia Bank. John Tomaszewski's authority was limited to acting as signatory at Arthur Brass direction.

INTERROGATORY NO. 4: Identify each payment, transfer, loan, salary, wage, distribution, or other money You received from GCAC.

RESPONSE: See attached spreadsheet for payments from 3-17-2017 through 10-29-2019.

INTERROGATORY NO. 5: How much money did GCAC transfer to You or for Your benefit.

RESPONSE: See Response to Interrogatory #4

INTERROGATORY NO.6: Identify each payment, transfer, loan, salary, wage, distribution, or other money your wife received from GCAC.

RESPONSE: See attached. Mr. Brass allocated a portion of his salary to be direct deposited to his wife convenience purposes to be used for general household expenses.

INTERROGATORY NO.7: Identify each payment, transfer, loan, salary, wage, distribution, or other money your mother received from GCAC.

RESPONSE: See attached, Debtor produced all information within his possession.

INTERROGATORY NO. 8: Identify each payment, transfer, loan, salary, wage, distribution, or other money your sister received from GCAC.

RESPONSE: All payments made by GCAC to the Debtor's sister were made on behalf of their mother. Therefore, the spreadsheet responsive to Interrogatory #7 includes all payments.

INTERROGATORY NO. 9: Identify the date, amount, and purpose of all funds GCAC received from third parties for the sale of asphalt and other commodities.

RESPONSE: See attached

INTERROGATORY NO. 10: Identify the date, amount, and purpose of all funds you allege GCAC paid to Vitol.

RESPONSE: Attached

INTERROGATORY NO. 11: Identify the sources of working capital for GCAC.


RESPONSE: GCAC did not have any bank loans for working capital during this period of time. GCAC received funds from 1); cash on hand; 2) loans from shareholders; and 3) proceeds from sales of product.

INTERROGATORY NO. 12: Describe in detail the factual basis for your contention that GCAC was not insolvent during the pendency of its relationship with Vitol, as set forth in paragraph 6 of your Answer.

RESPONSE: GCAC had an ongoing business that was valuable and worth more than its obligations.

Dated: _____

I declare under penalty of perjury that the information, statements and facts given above are true and correct to the best of my knowledge.



Arthur J. Brass

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

3 Arthur Jacob Brass,)
4 Debtor.) CASE NO. 21-60025
-----)
5 Vitol Inc.,) CASE NO: 21-06006
6 Plaintiffs,) ADVERSARY
7 Vs.) Houston, Texas
8 Arthur Jacob Brass,) Wednesday, September 7, 2022
9 Defendants.) 10:32 A.M. to 6:02 P.M.
-----)

10 TRIAL
11 BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
12 UNITED STATES BANKRUPTCY JUDGE

13 APPEARANCES:

14 For Plaintiffs: MICHAEL P. COOLEY
15 KEITH MILES AURZADA
16 Reed Smith, LLP
2501 N. Harwood, Suite 1700
Dallas, TX 75201

17 For Defendant: MIRIAM GOOTT
18 JOHNIE J. PATTERSON
Walker & Patterson, PC
19 P.O. Box 61301
Houston, TX 77208

20 Court Reporter: ZILDE MARTINEZ

21 Courtroom Deputy: ZILDE MARTINEZ

22 Transcribed by: Veritext Legal Solutions
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23 Tel: 800-727-6396

24 Proceedings recorded by electronic sound recording;
25 Transcript produced by transcription service.

1		<u>INDEX</u>		
2	<u>PLAINTIFFS' WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	ERIC KUO	27/58	130/213	
4				
5	<u>DEFENDANT'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
6				
7				
8	<u>PLAINTIFFS' EXHIBITS</u>			<u>RECEIVED</u>
9	EXHIBIT 1			32
10	EXHIBIT 14			61
11	EXHIBIT 25			73
12	EXHIBIT 3			78
13	EXHIBIT 12			81
14	EXHIBIT 18			91
15	EXHIBIT 19			95
16	EXHIBIT 22			99
17	EXHIBIT 23			100
18	EXHIBIT 54			115
19	EXHIBIT 86			126
20				
21	<u>DEFENDANT'S EXHIBITS</u>			<u>RECEIVED</u>
22	EXHIBIT 25			181
23	EXHIBIT 23			205
24				
25				

1 HOUSTON, TEXAS; WEDNESDAY, SEPTEMBER 7, 2022; 10:32 A.M.

2 (Call to Order)

3 THE COURT: Okay, good morning, everyone. This is
4 Judge Lopez. Today is September 7th. We are back on the
5 record in Vitol v. Brass. I hope everyone had a good
6 holiday weekend. I see counsel for Vitol here. Counsel for
7 Brass is here.

8 Why don't we talk a little housekeeping? Before
9 we do, I want to make sure to talk, that no one is in the
10 room where the rule has been invoked and that if there's any
11 witness that -- can we just make sure that they're not
12 actually kind of sitting out here, that they are further
13 down the hallway so they can't actually hear what we're
14 saying so that the rule can actually be the rule? We're
15 good? Okay.

16 Mr. Cooley, why don't we talk a little
17 housekeeping?

18 MR. COOLEY: Of course, Your Honor.

19 THE COURT: I saw that you filed some stuff. So
20 if you want to talk about it now.

21 MR. COOLEY: Very well, Your Honor. The --

22 THE COURT: Why don't you get closer to the mic.
23 I want to make sure we can hear you.

24 MR. COOLEY: Of course. Over the weekend we filed
25 just a handful of things. We filed an amended witness and

1 exhibit list I think together with a redline of it to show
2 the changes which had to do with some of the items that had
3 been previously described to the Court; the renumbering of
4 the misnumbered exhibits, I believe we added on the
5 Tomaszewski deposition, and there might have been one or two
6 other edits that were noted in the redline. We filed that.
7 That's one.

8 THE COURT: Okay.

9 MR. COOLEY: Next, Your Honor, we also filed what
10 we titled a Notice of Production of Chubb Documents. This
11 was just to answer the objection that had been raised by
12 opposing counsel that certain documents that had been
13 produced by Chubb in the course of this litigation,
14 including a document we have referred colloquially as the
15 jewelry rider had not previously been produced to counsel in
16 this case. This got into the question of being able to
17 verify transmittals through share file and such. The Court
18 may recall we discussed that last week. So we filed a
19 notice together with an affidavit from Mr. James Tolbert,
20 whom the Court has heard from previously -- he is our e-
21 discovery technician at Reed Smith -- detailing the efforts
22 he went to and the confirmations that he found in the system
23 that --

24 THE COURT: You think the Chubb docs were
25 previously produced minus the one page? I'm assuming the

1 business record affidavit that was attached to it?

2 MR. COOLEY: Correct, Your Honor. We believe all
3 of those documents were previously produced.

4 THE COURT: Are you going to try to get a -- are
5 you going to try to get, whoever the witness was, to try to
6 -- are you going to try to proceed to get Chubb in, or
7 what's your thought now that you've produced that?

8 MR. COOLEY: Your Honor, I think the only issue --
9 if I recall correctly, the only issue with respect to Chubb
10 was the question of whether or not they had previously been
11 produced. I believe that was the document as to which there
12 was no --

13 THE COURT: I agree. So are you going to seek to
14 try to move that in at some point?

15 MR. COOLEY: Yes, Your Honor. Yes.

16 THE COURT: Okay. And are you going to try to
17 move through business record affidavit or are you going to
18 try to move it through a witness, or what's your plan?

19 MR. COOLEY: Well, Your Honor, since there was no
20 -- since as I understood it counsel withdrew their objection
21 to the authenticity of the document, that was no longer in
22 question. The issue was solely whether or not the document
23 had in fact been produced previously, i.e. whether there was
24 an unfair surprise.

25 THE COURT: Okay.

1 MR. COOLEY: I believe we've addressed that. And
2 with the withdrawal of the authenticity objection, Your
3 Honor, we would submit that that document is ripe for
4 admission to the record.

5 THE COURT: Okay. We'll see what the plan -- let
6 me ask you another question.

7 MR. COOLEY: Yes, Your Honor.

8 THE COURT: Before we broke the other day there
9 was a question about Mr. Brass and you had started
10 describing about being unable to serve him with a subpoena
11 in connection with his testimony. It was the end of the day
12 and I didn't want to take up a new topic, quite frankly, at
13 that point. But just at the 10,000-foot level -- and I mean
14 it, no spin zone -- where do things stand with your attempt
15 to try to subpoena Mr. Brass, or do you have any knowledge -
16 - and I'll turn to Ms. Goott as well. Maybe she has better
17 knowledge, or Mr. Patterson. This is just me trying to
18 understand what we started talking about on Friday.

19 MR. COOLEY: Yes, Your Honor. At a very high
20 level -- and to the extent we need more detail, Mr. Aurzada
21 can get into the details. But just at a high level, we have
22 over the last some number of days, several days been making
23 -- been employing process servers to serve Mr. Brass with a
24 trial subpoena. They have so far been unsuccessful. I'm
25 not going to get into the spin --

1 THE COURT: That's all I need to know.

2 MR. COOLEY: They have so far been unsuccessful.

3 THE COURT: Okay.

4 MR. COOLEY: And those efforts continue.

5 THE COURT: Okay. Mr. Murray.

6 MR. COOLEY: and with respect to Mr. Murray, Your
7 Honor, again, we uploaded or we filed over the weekend some
8 briefing on the Rule 26(a) and 26(e) questions with respect
9 to the initial disclosures and the obligation and the
10 limits, candidly, of the obligation to supplement that
11 disclosure. I know that counsel filed a response to that I
12 believe last night. Frankly, I think we are satisfied with
13 the briefing. We don't believe that counsel has articulated
14 -- has identified any caselaw in support of opposing
15 counsel's interpretation of it, nor any explanation for why
16 it is insufficient that Mr. Murray was identified in the
17 course of a deposition, as much as the advisory committee
18 note describes.

19 THE COURT: Okay.

20 THE COURT: I think we're satisfied with the
21 briefing.

22 Your Honor, our view on this is this is
23 essentially of a piece with the pattern of objections that
24 Defendant's counsel have raised in this --

25 THE COURT: I don't want to go there. I want to -

1 - let me ask you today what's the plan in terms of witnesses
2 who may come today.

3 MR. COOLEY: Mr. Kuo is here in an anteroom down
4 the hall. And we are prepared to proceed with him today. I
5 imagine that his testimony could take the day given --

6 THE COURT: How much time do you think you need on
7 direct for him?

8 MR. COOLEY: I think the direct, Your Honor, is on
9 the order of an hour give or take.

10 THE COURT: But do you think we can work at a
11 minimum to see if we can get through? And I want you to
12 take as much time as you want. But maybe the game plan
13 would be see if we can get through Mr. Kuo's direct by
14 lunchtime. And then if we're done by that time, then we
15 could pick up with the cross beginning in the afternoon if
16 it takes -- if you get before then, then we'll start on the
17 cross, maybe stop around 12:30, come back to 1:30, and then
18 we'll go until about 6:00.

19 MR. COOLEY: Absolutely, Your Honor. We are
20 prepared to do whatever we can to -- if it is possible to
21 get the witness done in the day so that he can go back to
22 his job, we are here to do what we can to advance that aim.

23 THE COURT: In terms of additional days that the
24 parties could come back -- I know I pitched out the 16th and
25 the 30th. How do those days look for Mr. Dietz? And I know

1 we have to talk about Brass. But in terms of Mr. Dietz, is
2 there a date that works better?

3 MR. COOLEY: I think either of those -- I think
4 both of those days. And the Court had mentioned the 29th as
5 a possibility.

6 THE COURT: Yes.

7 MR. COOLEY: And then the 30th in Victoria. We
8 all took a field trip. Mr. Dietz can make wither of those
9 dates work. And so I think probably in part based on where
10 we get to by the end of the day and also perhaps as a
11 function of what happens with Mr. Brass, we'll be ready to
12 keep this moving forward regardless.

13 THE COURT: Okay. Thank you. Ms. Goott, let me -
14 - or Mr. Patterson, let me ask if you can just -- I wrote a
15 list. And you can take them up in any order that you want.
16 I know -- if I were to say Chubb, Brass, Murray, you can
17 take them up in any order that you wish.

18 MS. GOOTT: Sure.

19 THE COURT: I've read your response. But
20 certainly give you a fair opportunity to just describe it.
21 Maybe we can -- Chubb is the one that I kind of want to --

22 MS. GOOTT: Sure.

23 THE COURT: If we can start with that one first
24 And then whether you want to go to Brass or Murray next,
25 I'll leave that up to you.

1 MS. GOOTT: I'll go in your order.

2 Chubb. The Chubb issue is really simple. And I
3 can pull up the docket number if it's helpful for you. But
4 after the close of discovery in this adversary case, Vitol
5 filed the second time a motion for 2004 exam in the main
6 case. I object. Wait a second, you've got a pending
7 adversary. And if you recall a year ago, they did the same
8 thing. They filed a 2004. I said you can't do this, we
9 have a pending adversary. We came to court. The judge
10 denied your 2004.

11 Fast-forward. Discovery is over, and they file a
12 motion for a 2004 exam in the main case. And if you look at
13 it, the whole thing is about this jewelry rider with Chubb.
14 And we have a hearing. And I said, Judge, we have a trial
15 coming up. They're going to come in and try to use this.
16 And they said no, judge, this is about the objection to
17 exemptions. We have this jewelry rider. We need to go
18 through it. We need to ask not only the Debtor, but his
19 non-filing spouse about it. And you said okay, I'm going to
20 give you guys this limited opportunity in the main case to
21 do a 2004. And if you look at the motion, it's all about
22 the jewelry rider.

23 And then they serve the debtor with a subpoena for
24 documents only about this Chubb rider and the insurance and
25 they schedule him for a 2004 exam, which was scheduled to

1 occur one week before trial. And why is that important?
2 We're going into this after they make representations to
3 this Court that this Chubb rider -- it's not about the
4 adversary, because I knew. It's not the first time I've had
5 a law firm try to do this. We're going to play it through
6 the main case. And I brought it to the court and they said
7 no, Judge, they represented everybody. No, no, no. This is
8 for our objection to exemptions. And they told this Court
9 Mr. Murray wants to sell assets to the Debtor and we need to
10 know what it's worth. Okay. If they're going to take this
11 position, because that's what they represented. And in
12 fact, they scheduled this 2004 exam one week before trial.
13 A day before, they cancel it. I ask them why. Nobody
14 responds to me. But the point is I go up until the -- our
15 exhibit list was due the day they were going to do the 2004
16 exam of Mr. Brass. So I go into that day assuming based on
17 their motion, the subpoena, their representation to this
18 Court that this jewelry rider is all about the objection to
19 exemption.

20 And then they file and include it in the exhibit
21 list and say no, for the adversary, it's for the adversary.
22 You told us it was for the exemptions, but now you're
23 telling me it's for the adversary. And I'm willing to bet
24 that when this case is over, they're going to come back in
25 and say okay, now we're ready to do our 2004 exam of the

1 jewelry rider and we're going to have the same problem.

2 They can't come in here and argue one way to get the relief
3 they want and then turn around and say, surprise. That's my
4 position. Chubb.

5 Mr. Brass. I'm sorry, Mr. Murray I think you said
6 next.

7 THE COURT: Oh no. Whichever one.

8 MS. GOOTT: I don't need to cite and do research
9 for a weekend on caselaw because the rule is abundantly
10 clear. They have to give notice of witnesses they intend to
11 use at trial. And what did they tell this Court? Judge,
12 it's not our fault. They should have known. But more
13 importantly, we only found out at a deposition that Mr.
14 Murray, the corporate trustee of GCAC was the one that had
15 documents. I said what I said in my response. I don't need
16 to repeat it.

17 But the bottom line is they assumed -- Vitol tells
18 you multiple times we assumed that Mr. Brass would know the
19 finances of GCAC. We've told you that multiple times. They
20 came in here after discovery and said, Judge, we thought Mr.
21 Brass was going to know about the finances of GCAC and he
22 did it, so we really need to go depose Mr. Tomaszewski. I
23 keep hearing this. We didn't know. We found out.

24 And what did they do then? They came to court and
25 they said, Judge, we didn't know. Please extend discovery.

1 Please let us go depose Mr. Tomaszewski. And you did. And
2 they got it. But they didn't come in here, tell you, tell
3 me, oh, we didn't know that the Chapter 7 trustee was the
4 guy. Well, they didn't -- they sent me interrogatories.
5 They didn't say who has these vital documents. They're
6 telling this Court it's so prejudicial and important.

7 If this is the crux of what they need for this
8 case, wouldn't that be the first thing they asked for; where
9 are they, who has got them, where can we find them? But to
10 turn around and say oh, they didn't tell us that the Chapter
11 7 trustee for GCAC might be the person. And even after they
12 found out, they tell this Court I found out in March. We
13 are in September and they still never did anything. And we
14 know they can file briefs and motions. File a witness and
15 exhibit list midway through trial? That's wholly
16 inappropriate. That is not in compliance with this Court's
17 order of when to file it.

18 And I know you didn't ask, but I have one comment.
19 They say, Judge, we just -- we amended the exhibit list, we
20 just misnumbered it. I would ask you to please look at that
21 exhibit list. There is more than just numbering. They
22 specify how they're going to call Mr. Brass. They fixed it.
23 Right? In the middle of trial. Because -- and this brings
24 me to Mr. Brass.

25 A couple days ago in open court, they tell you,

1 Judge, we're either going to call Mr. Brass as a witness if
2 he's here or we're going to offer the deposition transcript.
3 That's what they said in open court. Then they changed
4 their mind. Then after they make that representation to the
5 Court, then they start looking for him, in the middle of
6 trial. That was their strategy.

7 THE COURT: Where is Mr. Brass?

8 MS. GOOTT: I don't know where he is right now.
9 If you're asking me to find out, I will find out.

10 THE COURT: Oh no, no, no. I'm just asking if...

11 MS. GOOTT: It is -- okay.

12 THE COURT: I guess I'm just trying to understand.
13 Is it -- I don't want to draw conclusions because it's just
14 totally -- I just go into a room and I come out. I don't
15 know what goes on outside of -- I know they're saying they
16 can't find him or that folks have been trying to serve Mr.
17 Brass --

18 MS. GOOTT: For the last few days is what they
19 said. In the middle of trial after they've told this Court
20 that if he's not here, we're going to offer his deposition
21 transcript.

22 THE COURT: Got it.

23 MS. GOOTT: It's their burden. About a trial
24 that's been set for months. And then midway through trial,
25 they want to come in here and say, oh, Judge, we can't find

1 them? Ask them if they ever called me one time or emailed
2 me one time and said will you bring them. Not once. Now in
3 the middle of trial to come in here and say, oh, we've been
4 trying to serve him? It's not how a trial works. It just
5 can't be. In the middle of trial amending exhibit lists,
6 changing strategy? It's inappropriate.

7 THE COURT: Thank you.

8 Mr. Cooley, what say you to the -- oh, Mr.
9 Patterson, please.

10 MR. PATTERSON: (indiscernible).

11 THE COURT: It's still out there. Oh, no. Thank
12 you. No, no. That's on my mind, Mr. Patterson, I assure
13 you.

14 MS. GOOTT: I'm so sorry.

15 THE COURT: No, no. Go ahead.

16 MS. GOOTT: I left off one thing about Chubb.

17 THE COURT: Okay.

18 MS. GOOTT: I just want to make a correction to
19 what Mr. Cooley said. He said that they tried to offer the
20 Chubb documents and that I objected, saying that I didn't
21 get the documents. I did not raise that objection. the
22 Court said to him please show me that you served her,
23 because we know that's coming. I never said a word about
24 it.

25 THE COURT: I agree.

1 MS. GOOTT: So it's a misrepresentation for him to
2 say that was the basis. That was not the basis of my
3 objection. My objection was of the representations made and
4 my belief of what the jewelry rider was for in the main
5 case.

6 THE COURT: Yeah. Mr. Cooley, what response do
7 you have?

8 MR. COOLEY: Just briefly, Your Honor. On the --
9 with respect to the Chubb document, I would note that we
10 also -- that we filed a notice of subpoena to Chubb on
11 December 15th, 2021 in the adversary proceeding. That's at
12 Docket 22. And so they were subpoenaed as part of this
13 adversary proceeding as well.

14 And as I said before and as we detail in the
15 notice that we filed and the accompanying affidavit from Mr.
16 Tolbert, those documents that were received from Chubb were
17 produced to counsel via share file on March 8th, 2022, which
18 I believe -- I don't think I heard any dates, but I believe
19 that March 8th of 2022 was prior to the events that counsel
20 described. And I just wanted to make that note for the
21 Court.

22 As far as Mr. Brass is concerned, I am not sure
23 that I agree with the timeline as Counsel is laying it out.
24 Counsel is also not laying out any specific dates for when
25 things started and stopped and so on. And the Court wanted

1 me to stay at a high level -- stay away for the time being.

2 I'll just say I'm not sure I agree with that timeline.

3 Happy to answer any other questions the Court has.

4 THE COURT: Have you picked up the phone and

5 called him, tried to find him?

6 MR. COOLEY: Tried to call...

7 THE COURT: Opposing counsel.

8 MR. COOLEY: Your Honor, we have not reached out

9 to opposing counsel. Early on we served a subpoena to Mr.

10 Brass by delivering it to counsel. And that subpoena was

11 not accepted. We have not reached out to counsel.

12 THE COURT: Okay. Here's what we're going to do

13 on all three. And I'll give you all a second to sit down,

14 and then let's bring Mr. Kuo in.

15 So there's three things here. I'll go -- I've

16 written down Chubb, Brass, Murray. Don't read too much into

17 the order. It's just what I wrote down. We'll go in that

18 order. You have an opportunity to get -- I did ask the

19 question because there were some other questions about other

20 documents that were produced let's just say in connection

21 with the witness and exhibit list. But if it was Iberia

22 Bank, there were some issues there. And I did ask the

23 question about Chubb.

24 I did note that Chubb was served with a trial

25 subpoena in this case and all the evide -- from what I can

1 see, what was provided to me, the question was answered to
2 me that Chubb -- whatever -- the 1,174 pages, and I haven't
3 scrolled through them, are they were produced to counsel.
4 They are on the witness and exhibit list as the Bates
5 labeled them out. If you want to get a witness here to try
6 to prove them up, if you can get Counsel to agree on a
7 business record affidavit, that's one thing. If not, you're
8 going to have to go the traditional route. Well find a date
9 where it works.

10 So I'm not going to exclude the Chubb documents.
11 Okay? I'm not going to exclude the opportunity to try to
12 get the Chubb documents in. You can try to get them in
13 through a business record affidavit. If you can get the
14 gentleman in, we can do what we did with Wagner, or you can
15 try to do something else. But I get it, they were
16 subpoenaed, it was produced.

17 Mr. Murray, you know, we talked about Mr. Murray
18 testifying. I listened to the arguments that you made
19 before. I think you satisfied the standards for disclosure.

20 I thought a lot about writing something, putting
21 stuff in writing about the way I thought discovery went and
22 how open I was to putting things into discovery had someone
23 just reached out to the Court, who Mr. Murray is, previous
24 issues related to trial documents. I decided not to do
25 that. But if you ask me to, I'll do it. But I want you to

1 give some thought to what I would have to do to get
2 comfortable that I've covered all the bases as to why I
3 don't think Mr. Murray should testify. And I want you all
4 to think about whether you really want me to write it or
5 not. But if you do, I'll write it in short order. But I'm
6 hoping we can settle, just resolve the Murray issue as is.

7 With Mr. Brass, I need to hear from Mr. Brass.
8 Normally judges let cases fly, but Federal Rule of Evidence
9 614 allows the Court to call a witness on its own or at the
10 request of a party. There is no way in the interest of
11 justice that I could resolve the issues that are provided in
12 here without hearing from Mr. Brass. Mr. Brass is a debtor
13 in this case. Whether Mr. Brass is -- one could read this
14 as evading a subpoena or not. I'm not going to get into all
15 that. And I think it would be incredibly prejudicial and
16 unfair for me to presume anything like that. It hasn't
17 happened. But Mr. Brass will have to testify if I call him
18 or not one way or the other. There's going to be testimony
19 that's going to be required that will not be elicited by the
20 facts as I see them.

21 If I call Mr. Brass, I suspect the parties could -
22 - I'm trying to avoid conducting my own examination.
23 Federal Rule of Evidence 614 is clear. I certainly do this.
24 I am within my right to do it.

25 And I'll tell you where this goes. And that's why

1 I don't want the witness here. There's testimony so far.
2 And based on the briefing and the arguments that have been
3 made to me, there are a couple of issues that are out there.
4 I haven't reached a conclusion on any of them, but there are
5 issues out there. Was there a JV? Was there product,
6 asphalt product actually released to Mr. Brass? If it was,
7 what did he do with it? What was his understanding of what
8 he was supposed to do with it? Did he sell it? Is there
9 asphalt laying somewhere out there that we don't know about?
10 If he did sell it, what did he do with the money? Did he
11 operate under the assumption of a JV or not? Did he not
12 give any of it back? Did he blow it? And I don't know
13 anything what's going on, but I think Mr. Brass is the only
14 one that can tell me what his understanding it as it relates
15 to whether there was a JV or not.

16 I haven't seen any documents. Maybe somebody will
17 get an assigned JV or not. I don't know. But I do know, or
18 at least it appears that testimony is going to be that Mr.
19 Brass received something. And the question is, well, what
20 happened after that? And I think he is the only one that
21 can kind of answer it, the part B of it, because one of the
22 elements -- one of the causes of action is willful intent,
23 right? Willful and malicious injury, right? And fraud and
24 there's embezzlement, right? If you take something lawfully
25 and then do some or other with it -- and I don't know and

1 I'm not drawing any conclusions about what Mr. Brass did or
2 didn't do. I just know that I need to hear from Mr. Brass.
3 And so I'm not sure that the testimony is going to be
4 elicited from there.

5 So if Mr. Brass wants to show up and the subpoena
6 finds him and he shows up to testify on one of those two
7 dates, I don't -- it's fine with me. But if not, I am going
8 to call him. But I don't want to do my own examination
9 because I think at some level -- I'll do it if I have to,
10 but I don't want to put my thumb on the scale. And I think
11 sometimes people can read into questions, but I'm really
12 just trying to understand what exactly happened. But that's
13 the Debtor. The Debtor has submitted himself to the
14 jurisdiction of this court. So I'm not going to accept that
15 Mr. Brass just doesn't show up. I'll call him.

16 And I'm not saying anybody is -- I'm not saying
17 he's evading. What I'm saying is if you can find somebody
18 to get him in, you can try to get him in.

19 Murray, I'm really asking you to think about
20 Murray. Brass will testify, and I'll -- I want to keep my
21 thumb off the scale and not ask any questions because I
22 think it's just right for me to just do what exactly
23 happened with Mr. Loya. I may ask a clarifying question one
24 way or the other. And I don't want anyone to read anything
25 into me thinking anything about Mr. Brass, whether Mr. Brass

1 is one way or the other. I've just got to hear from him in
2 connection with this case and the interest of justice
3 because I can't -- I can't resolve this. And I understand
4 that it's the Debtor's -- I mean, it is the burden of Vitol
5 in this case, but I don't know -- in other words, the only
6 option is that I just keep pushing out this until he gets
7 found. But if there's a valid subpoena out there -- and I'm
8 just trying to avoid that. We can kind of keep all the
9 evidence and what's straight in the judge's head at one
10 spot. So that's kind of where we are.

11 MS. GOOTT: Judge, all they had to do was ask.
12 They didn't. But now that I hear you, I will bring him.

13 THE COURT: But I want to make it -- we've got two
14 days. And I think --

15 MS. GOOTT: I'll make it happen.

16 THE COURT: One of those days -- but it doesn't
17 mean that -- I don't know what's going on. For example,
18 there were other people who were traveling and have other
19 schedules and things I think.

20 MS. GOOTT: He was traveling. His mother-in-law
21 has been in the hospital.

22 THE COURT: That's what I'm saying.

23 MS. GOOTT: They would know if they would have
24 picked up the phone.

25 THE COURT: I got it.

1 MS. GOOTT: But they didn't. And they want to
2 just make it look -- they want to keep it high level so that
3 it looks bad.

4 THE COURT: And that's why you're hearing it from
5 me. I don't want to reach out into anything --

6 MS. GOOTT: They could have put an email in front
7 of you, Judge. Look, she didn't respond. But anyway, he
8 will be here -- yes.

9 THE COURT: We can just pick one of those two
10 days. And Dietz can go one day and -- or we can make sure
11 that Dietz is here one day and we can make sure that Mr.
12 Brass is here one day and we can just kind of take it up.

13 MS. GOOTT: Thank you, Judge.

14 THE COURT: Okay.

15 MS. GOOTT: He will be here. And I would prefer
16 that the questions come from him because I don't --

17 THE COURT: I prefer it, too.

18 MS. GOOTT: Yes. I never like objecting to a
19 Court's questions.

20 THE COURT: I would prefer to stay out of it a
21 hundred percent. But I think you all can coordinate on
22 whether it's the -- Ms. Goott, I didn't get your thoughts on
23 the 16th and the 30th. That was the other piece.

24 MS. GOOTT: I believe those are fine. September
25 16th. Those are --

1 THE COURT: You're out on the 30th? Okay. So
2 maybe we can --

3 MS. GOOTT: Can I tell him to be here on the 16th?

4 THE COURT: Yeah, we can do that.

5 MS. GOOTT: Let's just do that.

6 THE COURT: Okay. And then Mr. Patterson? I
7 don't want to set any times now when I want people to show
8 up. I want everybody to think about it. Because I want to
9 pick that second date so that we know -- and Mr. Patterson,
10 I want you to just -- maybe the easiest thing to do is the
11 parties can -- my case manager can just throw you all some
12 additional dates and then we can find another slot.

13 MR. PATTERSON: (indiscernible).

14 THE COURT: Sure.

15 MR. PATTERSON: (indiscernible).

16 THE COURT: Well, the concern I have is that --
17 but then if that's the case, then I can't rule on a 7052
18 motion. If that's the case then --

19 MR. PATTERSON: (indiscernible).

20 THE COURT: There's nothing I can do without
21 hearing from him on a 7052 is subpoenaed, I'm -- or need to
22 hear from him there. I don't think -- procedurally I think
23 I would just let it play out if that was the case.

24 MR. PATTERSON: (indiscernible).

25 THE COURT: No. And I appreciate it. And I

1 wouldn't want to read into it. That's why I thought it was
2 easier for me to bring up the issue so that we can take --
3 so that that element never cracked up. And no one else had
4 the opportunity to do it. But maybe my case manager can
5 throw some dates. And we'll hold the 16th. Things are
6 starting to fill up and I just want to make sure that we
7 hold the 16th. So with that said -- and you're going to
8 have to think about timing on -- but I want to make sure
9 they know whatever somebody is going to come about if you're
10 going to try to get Chubb docs in, that they know exactly
11 what day that's going to go forward. Because we're going to
12 pick two trial dates.

13 MR. COOLEY: Yes, Your Honor.

14 THE COURT: But maybe we can just bring Mr. Kuo in
15 and get going.

16 MR. COOLEY: We are prepared to do that if the
17 Court's ready to proceed.

18 THE COURT: Okay. Let's get him in. And
19 depending on the timing, maybe we can really -- now that
20 it's like 11:10, maybe we can keep the timing. And you do
21 your direct, take as long as you want. But then we'll work
22 through the direct and then we'll take a break for lunch.
23 And then we'll start with the cross there. And I'll make
24 sure that -- I'll make sure to give him the admonition to
25 make sure.

1 MR. COOLEY: That works for me, Your Honor.

2 THE COURT: Okay.

3 Okay, sir, why don't you come up. Mr. Kuo, before
4 we begin, in terms of giving someone power as presenter.

5 MR. COOLEY: Your Honor, Ms. Mehta is back with us
6 today. If she could have the power. Thank you, Your Honor.

7 THE COURT: I'll swear the witness in. Ms. Mehta,
8 are you okay? Okay.

9 Sir, can you please raise your right hand? Do you
10 swear to tell the truth, the whole truth, and nothing but
11 the truth?

12 MR. KUO: Yes.

13 THE COURT: Okay. I want you to pull that
14 microphone just a little bit closer to you. If you'd keep
15 it in the general direction where you are, it's really good
16 to pick it up. Counsel is going to ask you questions. You
17 may hear objections to some of the questions I asked. If
18 you give me an opportunity to resolve the objection, and
19 then if necessary I'll let you know if you can answer the
20 question or if counsel was to ask you another question.
21 Okay? Thank you.

22 Mr. Cooley, you may proceed.

23 MR. COOLEY: Thank you, Your Honor.

24 DIRECT EXAMINATION OF ERIC KUO

25 BY MR. COOLEY:

1 Q Would you go ahead and state your name for the record,
2 please?

3 A Eric Kuo.

4 Q And where are you currently employed?

5 A Vitol, Inc.

6 Q How long have you worked for Vitol?

7 A Almost 12 years now.

8 Q And what's your role there?

9 A I am a fuel oil trader.

10 Q What does a fuel oil trader at Vitol do?

11 A It's a couple fold. I mean, we buy and sell fuel oil
12 components, lend product, sell to end users. We sell to
13 other traders and study markets and, you know, make opinions
14 and guesses and bets on where we think the market may be
15 headed.

16 Q How long have you worked as a trader over your career
17 in its entirety?

18 A Probably almost 25 years.

19 Q And just in fuel oil or in anything else?

20 A Mainly in fuel oil, but I've traded a few other
21 products over that course of time.

22 Q Just to give the Court some sense of scale, what would
23 be a typical volume of trading for you in a year, whether by
24 dollars or number of trades or whatever?

25 A Oh, gosh. It would -- gosh. I would say I do hundreds

1 of trades over the course of the year. It just depends. In
2 certain years it's busier and in certain years it's...

3 Q And when you do these trades, who are the
4 counterparties you're trading with generally?

5 A It can be oil majors, it can be refiners, it can be
6 other trading companies. Some end users like cruise lines,
7 it could be -- and some of it's just done on exchanges. So
8 it's just bilateral with the clearing court.

9 Q Are there limitations on who you can trade with?

10 A On the physical side there is, yeah. We have to clear
11 all the counterparts that are not through a KYC process
12 where, you know, we have to vet the company, we have to know
13 kind of who we're dealing with, the management and so forth.

14 Q I think you gave us an acronym there, KYC. What's
15 that?

16 A It stands for Know Your Counterpart so that we have a
17 thorough due diligence on companies we deal with.

18 Q Is hedging at all a part of your business?

19 A It is.

20 Q And when I mean you, I mean you personally.

21 A Yes, it is.

22 Q How does a hedging transaction work in the context of
23 what you do?

24 A A hedge is an offset to a transaction which provides --
25 it limits the amount of risk in a particular transaction.

1 So a physical deal where you will hedge a deal to limit the
2 fixed price exposure or any sort of other basis exposure
3 that we would have to a particular commodity.

4 Q And what's the purpose of doing that in the context of
5 the trading you do?

6 A It limits your risk on a particular transaction.

7 Q And why is that important?

8 A Well, unless you're just planning on outright gambling
9 on the direction of a market, the hedge is put in place to
10 limit some of that exposure.

11 Q Ms. Mehta, could I have Vitol Exhibit 1 on the screen,
12 please? Perfect.

13 MR. COOLEY: Ms. Mehta, could I have Vitol Exhibit
14 1 on the screen, please? Perfect.

15 BY MR. COOLEY:

16 Q Mr. Kuo, I'll ask you to take a look at the document on
17 the screen which has been marked as Exhibit 1. Do you
18 recognize that document?

19 A Yes, I do.

20 Q Can you identify it to the Court?

21 A This was an email written by one of my colleagues,
22 Steve Barth, in November of 2016.

23 Q Were you a recipient of the email?

24 A Yes.

25 Q And does it appear to be a true and correct copy of

1 what it purports to be?

2 A Yes, it does.

3 MR. COOLEY: Your Honor, I would move the
4 admission of Vitol Exhibit 1.

5 THE COURT: Any objection? Vitol Exhibit 1 is
6 admitted.

7 BY MR. COOLEY:

8 Q Let me scroll to the second page of the document here.
9 And I probably should have done this before I did that, but
10 I'll go ahead and go through this just to make the record
11 clear. Do you recognize what's on the screen now?

12 A Yes, I do.

13 Q And would you describe it for the Court?

14 A These were some bullet points for a potential JV that
15 we were looking at with GCAC.

16 Q In November of 2016?

17 MS. GOOTT: (indiscernible).

18 THE COURT: Sustained.

19 MR. COOLEY: Scroll back to Page 1, please. I
20 thought the witness had testified, but I'll ask the question
21 differently.

22 BY MR. COOLEY:

23 Q What time period were you referring to in the answer
24 you just gave?

25 THE COURT: The question is what did we just

1 admit. Vitol 1 is admitted now. But is this part of Vitol
2 1? Or is Vitol 1 one page or is Vitol 1 --

3 MR. COOLEY: Vitol 1 is a two-page document, Your
4 Honor. I can lay an additional foundation if the Court
5 would like.

6 THE COURT: Why don't you do that? Because I
7 think that's appropriate. I understood it to just be an
8 email.

9 MR. COOLEY: I apologize, Your Honor. Let me
10 clear that up with Mr. Kuo now.

11 BY MR. COOLEY:

12 Q Mr. Kuo, looking back to the original, the first page
13 of Exhibit 1, does the email that you described to the
14 Court, did it come with any attachments?

15 A I believe so, yes, based on the subject in the
16 attachments.

17 Q And what is the name of the attachment if any to this
18 document?

19 MS. GOOTT: (indiscernible).

20 THE COURT: Sustained.

21 MR. COOLEY: All right.

22 BY MR. COOLEY:

23 Q Do you understand there to have been any attachments
24 that accompanied this email when it was sent to you in
25 November of 2016?

1 A I do.

2 MR. COOLEY: If I could have Page 2, Ms. Mehta?

3 BY MR. COOLEY:

4 Q And here I've put on the screen what is Page 2 of
5 Exhibit -- what's been marked Exhibit 1. Do you recognize
6 what's on the screen?

7 A I do.

8 Q Can you describe it to the Court?

9 A This is an outline for a potential JV that we were
10 looking at.

11 Q And do you know whether or not this was the attachment
12 that was referenced on the first page?

13 A Yes, I believe so.

14 Q And do you recognize it as such?

15 A Yes, I do.

16 MR. COOLEY: Your Honor, I would move the
17 admission of the two-page document comprising Exhibit 1.

18 THE COURT: Any objection?

19 MS. GOOTT: (indiscernible).

20 THE COURT: Okay.

21 MR. COOLEY: And I apologize. That was on my part
22 absolutely, Your Honor.

23 THE COURT: Exhibit 1 -- Vitol Exhibit 1 is
24 admitted for real this time, Ms. Martinez.

25 (Vitol Exhibit 1 Admitted into Evidence.)

1 BY MR. COOLEY:

2 Q In or around the time of this email communication, did
3 you ever have any conversations with Mr. Brass about these
4 bullet points?

5 A Yes, we did discuss that.

6 Q And are you familiar with a company, Gulf Coast Asphalt
7 Company, or GCAC?

8 A Yes, I am.

9 Q Who do you understand to be the principal at GCAC?

10 A Mr. -- AJ Brass.

11 Q And who would have been your primary day-to-day contact
12 at GCAC?

13 A Mr. Brass and Mr. Perugini.

14 Q And -- all right. What was your understanding of the
15 business of GCAC?

16 A GCAC was a company which was engaged in the buying and
17 selling of asphalt.

18 Q To your knowledge, was GCAC able to do that by itself?

19 MS. GOOTT: (indiscernible).

20 THE COURT: Sustained.

21 BY MR. COOLEY:

22 Q If GCAC was involved in the asphalt business, why were
23 they talking to you?

24 MS. GOOTT: (indiscernible).

25 THE COURT: Sustained.

1 BY MS. GOOTT:

2 Q Why were you talking to them?

3 THE COURT: I think we know the them is GCAC.

4 Your point is there, but you can ask that -- why don't you
5 ask?

6 BY MR. COOLEY:

7 Q Why were you talking -- in November of 2016, why were
8 you talking to GCAC about the asphalt business?

9 THE COURT: In November of 2016, why were you
10 talking to GCAC, if at all? There's your question.

11 BY MR. COOLEY:

12 Q We were discussing getting into the asphalt business
13 because Vitol did not have any business in the asphalt
14 business. And so we were discussing with them about a
15 potential JV in asphalt.

16 Q And based on those discussions, did you have an
17 understanding as to what GCAC wanted from Vitol?

18 A Yes. GCAC needed Vitol's financing to help finance
19 their business.

20 Q Did GCAC not have its own financing power?

21 MS. GOOTT: (indiscernible).

22 MR. COOLEY: Your Honor, the witness has just
23 testified that they were being asked to provide that. I'm
24 asking if they didn't have it themselves.

25 THE COURT: I think the way you worded it. I'll

1 sustain the objection.

2 BY MR. COOLEY:

3 Q At the time of these discussions in November of 2016,
4 what if any role was Vitol contemplating that it would play
5 in a business relationship with GCAC?

6 A Well, Vitol was looking at becoming a partner with GCAC
7 in the asphalt business. And what we brought to the table
8 primarily was the ability to fund any sort of projects.

9 Q Is that something that you've done before with
10 counterparties in your work at Vitol?

11 A What do you mean?

12 Q Funding the projects of others.

13 MR. COOLEY: Your Honor, the couns -- counsel
14 asked...

15 THE COURT: Overruled. Overruled.

16 BY MR. COOLEY:

17 Q You can answer.

18 A Sorry.

19 Q Is that something that -- let me see if I can ask this
20 question the same way twice. Is that -- is funding the
21 projects of other counterparties something that you have
22 done before in your work at Vitol?

23 A I have explored it in previous encounters, but nothing
24 that we have -- nothing that we had signed.

25 Q And in what form was Vitol to provide this funding

1 support or whatever you want to call it?

2 A In the initial points on the JV, we would -- Vitol
3 would be -- financing would be paying for all the ancillary
4 costs of doing the business and including buying the
5 product, blending the product, paying for transportation,
6 blending, hedging. Basically all the financial commitments
7 of the deal.

8 Q And just to be clear from the Vitol standpoint -- we
9 talked about GCAC. From the Vitol standpoint, who was
10 spearheading these conversations with GCAC?

11 A Myself and Steve Barth.

12 Q And why did you want to do transactions like this?

13 A Well, you know, we are an entrepreneurial business.
14 And so we -- you know, that's how we are compensated. We
15 develop the businesses and they're profitable. It's kind of
16 -- that's our business in general.

17 Q So after the time of this email, Exhibit 1, did there
18 come a time when Vitol did get into a trading business
19 relationship of some kind with GCAC?

20 A Yes.

21 Q When did that start?

22 A It started around about in July of 2017.

23 Q And how did it start?

24 A Well, we initially -- we initially acquired the assets
25 or some components of the oil from Rio energy, who was the

1 JV counterpart of GCAC prior to them exiting the business.

2 Q So did Vitol actually buy product from Rio? What
3 happened?

4 A Yes. Vitol purchased the produce from Rio. Yes.

5 Q In its own name or in the name of someone else?

6 A In the name of Vitol.

7 Q Was that an important distinction to you?

8 A Yes, because once we purchased the oil and titled it in
9 Vitol's name, we retained control over the oil and the
10 asset.

11 Q From that point forward, how many other asphalt trades
12 would you say you engaged in with GCAC over the course of
13 the relationship?

14 A Well, I would say first of all --

15 MS. GOOTT: (indiscernible).

16 THE COURT: Okay, sustained.

17 BY MR. COOLEY:

18 Q After this Rio purchase, did you engage in any other
19 trades involving Asphalt with GCAC?

20 MS. GOOTT: (indiscernible).

21 THE COURT: I'm going to overrule that.

22 Overruled.

23 BY MR. COOLEY:

24 A I think there were approximately 50 trades done with
25 GCAC, but they were done on behalf of the direction of GCAC,

1 not necessarily in conjunction. They were done on behalf of
2 GCAC.

3 Q Would you explain to the court, or to me frankly, what
4 you mean by that distinction that you just highlighted?

5 A Well, the trades that GCAC did were given to me after
6 the fact, after they had already completed the transaction.
7 So we were not involved. I was not involved in the decision
8 making of when to buy it, what price to purchase at, what
9 location or -- and conversely on the sales side. I was not
10 involved in any of the discussions on how the deal was
11 consummated or concluded.

12 Q Was anyone else at Vitol Inc. involved in that
13 decision-making process?

14 MS. GOOTT: (indiscernible).

15 THE COURT: Sustained. You can clarify.

16 BY MR. COOLEY:

17 Q I think you just -- if you weren't involved in the
18 decision-making process on buys and sells that were
19 presented to you from GCAC, was anybody else at Vitol?

20 MS. GOOTT: (indiscernible).

21 THE COURT: Overruled. You can answer.

22 BY MR. COOLEY:

23 A I'm sorry. Can you repeat the question one more time?

24 Q You said you weren't involved in discussions about the
25 buys and sells. Was anyone else at Vitol?

1 A No. It would have been just me.

2 Q So then once that information was provided to you, what
3 if any role did you have? What were you supposed to do with
4 that information?

5 MS. GOOTT: (indiscernible).

6 THE COURT: Overruled.

7 BY MR. COOLEY:

8 A So once they sent an email or called or texted the
9 trade, I would first hedge the deal. And second, I would
10 enter the deal into our trading system.

11 Q Did these transactions have any costs associated with
12 them?

13 A Yes. There was financing cost to purchase the product.
14 It depends on what the deal was in particular, but there
15 were --

16 Q Let's break it down. Some of these trades you said
17 included purchase of product. Is that a fair
18 characterization?

19 A Yes.

20 Q Did somebody have to pay to purchase the product?

21 A Yes.

22 Q Who paid to purchase the product?

23 A Vitol did.

24 Q Were there any other expenses associated with the
25 product once it was purchased?

1 A Potentially, yes. If the purchase -- if the product
2 was purchased in a different location, it would have to be
3 barged over, so moved from one location to the next. It
4 would -- there was inspection costs that were associated
5 with it. There were storage costs associated with putting
6 it into a particular terminal, and there are hedging costs
7 that are associated with each deal. So there are multitudes
8 of ancillary costs associated with a particular deal.

9 Q And who paid those expenses?

10 A Vitol did.

11 Q You mentioned hedging. Is there ever a cost or an
12 expense associated with hedging that has to be paid?

13 A Yes. There is margining requirements that have to be
14 put up for hedging.

15 Q Who paid that?

16 A Vitol did.

17 Q Do you know if GCAC was ever made aware --

18 MS. GOOTT: (indiscernible).

19 THE COURT: I don't think he finished the
20 question, so I don't know if he's leading or speculating.

21 MR. COOLEY: Your Honor, I'll finish the question.

22 BY MR. COOLEY:

23 Q Do you know if GCAC was ever made aware that Vitol was
24 paying these various costs?

25 MS. GOOTT: (indiscernible).

1 THE COURT: Overruled.

2 BY MR. COOLEY:

3 A Yes. GCAC was well aware that we were paying all of
4 these costs.

5 Q How do you know that?

6 A Because that was discussed from the onset of the when
7 we first, you know, started this business.

8 Q You mentioned hedging. Who was in charge of hedging
9 transactions?

10 A I was.

11 Q And so did you decide when to hedge?

12 MS. GOOTT: (indiscernible).

13 THE COURT: Sustained.

14 BY MR. COOLEY:

15 Q If you were in charge of hedging, what does that mean?

16 A That means once a deal is done, I decide on which
17 instrument to use to put the hedge on, when to do it, and at
18 what price.

19 Q Did you ever make GCAC aware you were doing that?

20 MS. GOOTT: (indiscernible).

21 THE COURT: It's a fair --

22 MR. COOLEY: I'm referring to --

23 BY MR. COOLEY:

24 Q With reference to -- you said you would decide what
25 hedges to put on. Did you ever make GCAC aware of the

1 hedging trades or the hedging transactions you entered into
2 relating to their transactions?

3 A Yes, on every deal I told them which -- what the deal --
4 -- what hedge was placed at what price and which instrument
5 was used.

6 Q Why did you tell them?

7 A Because that was my duty. Because once the deal was
8 hedged, I was -- we used to tell them what hedges were put
9 on so they would know.

10 Q Why? Why did they need to know that information?

11 A Because this is -- it goes hand in hand with a
12 transaction. It's a part of the overall transaction. It's
13 multifaceted.

14 Q I want to make sure the Court understands and I want to
15 make sure the record is clear what the stuff is that we're
16 talking about in these transactions. My question for you is
17 this. What's the commodity that we are talking about
18 related to these transactions with GCAC?

19 A We're talking about asphalt and asphalt components,
20 meaning that asphalt is not -- a finished-grade asphalt is
21 not necessarily -- you know, it doesn't come out that way
22 when it's produced. And so it needs to be blended with
23 different products to achieve a finished grade.

24 Q So what are the components? Broad strokes.

25 A It's a vacuum-tower bottom, it's a heavy, viscous oil,

1 which is then blended with other components to -- whether
2 it's aggregate and some other -- I'm not really familiar
3 with all the components that go into asphalt. But there's
4 multiple components that are used to produce a final product
5 which is then used to pave the roads outside.

6 Q Do you have an understanding as to how one makes a
7 profit from these types of transactions?

8 A Sure. You know, this is kind of what we do each day.
9 We try to -- we generally know what the price of a finished
10 component is. So, you know, if you liken it to baking a
11 cake, if you know what you can sell your cake for and all
12 the components that go into a cake, which is your flour and
13 sugar and your yeast and whatever else, if you can buy those
14 at a cheaper price and deliver them to somebody with a
15 margin included, then you make money. And if you do not buy
16 these components at a price equal to or less than your sales
17 price, then you will lose money.

18 Q And on the hedging side, are you also hedging asphalt?
19 I'll say it differently. What commodity or what -- what do
20 you hedge with in the transactions accompanying these GCAC
21 purchases and sales?

22 A Well, since there is no -- there is no asphalt swaps
23 market, there's not a direct hedge for asphalt, we use two
24 different components. We may use high sulfur fuel oil,
25 which is a derivative of one of the components in asphalt,

1 or --

2 THE COURT: Can you say that word slower?

3 THE WITNESS: Sure. We may use high sulfur fuel
4 oi.

5 THE COURT: Thank you.

6 BY MR. COOLEY:

7 A Which is a derivative of the components that -- so
8 they're very interchangeable, right? Sometimes these
9 components can go into a fuel oil blend, and sometimes they
10 can go into an asphalt commodity. So they can go either way
11 depending on pricing.

12 And then -- I'm sorry, your question was?

13 Q What do you hedge, what do you use to hedge.

14 A Oh, yes. And then the other component of the hedge is
15 we may at times use Brent futures. And generally I use that
16 when there's very little liquidity in the high sulfur
17 market. The high sulfur is generally a better hedge. But
18 at times we receive these trades later in the afternoon,
19 4:00 or 5:00 when there was very little liquidity in the
20 fuel oil swaps market. So I would use Brent or WTI's hedge.

21 Q And why do you use those two as opposed to anything
22 else?

23 A Well, they are the closest component to the particular
24 -- to asphalt.

25 Q And what would happen if you engaged in these purchase

1 and sale transactions without hedging?

2 MS. GOOTT: (indiscernible).

3 THE COURT: He's the head of trading at Vitol. I
4 think he can answer the question. Overruled.

5 BY MR. COOLEY:

6 A I'm sorry, your question again was? If you...

7 Q What happens if you engage in these purchase and sale
8 transactions of asphalt without hedging?

9 MS. GOOTT: (indiscernible).

10 THE COURT: He's a fact witness, but he is the
11 head of trading at Vitol. He can answer the question, his
12 understanding.

13 BY MR. COOLEY:

14 A So if you don't hedge, you're essentially just betting
15 on if the market is going up or going down. So if it's
16 going up, you'll make money if you bought something. If it
17 goes down and you have not hedged, then you'll lose money.
18 So we generally do not engage in -- we are not so much in
19 the practice of just betting one way where the market goes
20 up or if it goes down. So hence we put a hedge on because
21 we believe that we're in a physical driven market, so we buy
22 physical product. And we blend it and then sell the
23 component with a margin. We don't buy hoping that the
24 market will go up or down.

25 Q So we'll finish out this concept. Earlier I asked you

1 about what happens with the purchase. I want to ask you
2 about the sales side. Does there come a point in time when
3 these components, this asphalt gets sold?

4 MS. GOOTT: (indiscernible).

5 THE COURT: I'm not sure it was a lead. More of a
6 segue. But you can just ask the question, yeah.

7 BY MR. COOLEY:

8 Q Does there come a point in time when you sell the
9 products or components that were previously purchased?

10 A Yes. I mean, at some point you hope to sell. You
11 don't want to keep it in the tank indefinitely. You will
12 want to make a sale at some point.

13 Q How is the price set for that sale transaction?

14 A I'm not sure I understand the question.

15 Q Is there a market price for these products that
16 determines the price at which they're sold?

17 A Yes, there is generally a publication -- for example,
18 Argus and Platts. There's a multitude of different
19 publications which give an assessment of where -- and this
20 goes for all oil commodities -- an approximate value of
21 where a particular commodity is assessed.

22 Q And does the seller have to pay for the product when it
23 purchases it?

24 A Unless you're giving it to them for free, then yes,
25 they have to pay for it.

1 Q Excuse me. I asked that question poorly, and I've
2 heard counsel call me out. Let me just make sure I got the
3 question right. Does the buyer have to pay for the product
4 when they purchase it?

5 A Yes. Yes, you do.

6 Q Are there any credit terms associated with such a
7 transaction?

8 MS. GOOTT: (indiscernible).

9 THE COURT: Why don't you ask a clarifying
10 question?

11 BY MR. COOLEY:

12 Q Are there typically credit terms associated with a
13 transaction for the sale of asphalt and its components?

14 A Yes. It varies by counterpart, but yes, there are
15 credit terms given to each particular company that is set by
16 a team at Vitol which determines how much credit or no
17 credit that we will provide.

18 Q Coming back to this November 2016 email, Exhibit 1, did
19 GCAC and Vitol ever finalize an agreement on the terms for
20 joint venture?

21 A No, we never finalized the terms, nor did we sign any.

22 Q Did GCAC -- I think you just anticipated my next
23 question, but I'm going to ask it just to make the record
24 clear. Did GCAC and Vitol ever execute a joint venture or
25 similar agreement?

1 A No. There was never a signed....

2 Q Why not?

3 A We had many negotiating points that were outstanding.

4 There was -- there were numerous reasons that we weren't

5 able to execute it until all conflicts were cleared within

6 Vitol. So we had numerous redlines back and forth through

7 legal channels. We had multiple discussions over the course

8 of many months over the structure of potential JV. But --

9 and so these deals needed to be signed off by senior

10 management. We just needed time to get all of these points

11 taken care of.

12 Q What conflicts were there within Vitol?

13 A Well, unbeknownst to me after the fact, I did not --

14 there was a -- we have a company based in Europe called

15 VALT, which stands for Vitol Asphalt Limited Trading.

16 Q And would you just spell that for the record?

17 A It's an acronym. VALT.

18 Q Thank you.

19 A So VALT was engaged in the buying and selling and

20 trading of asphalt.

21 Q Where?

22 A It was across the world, but at the time had not been

23 active in the United States.

24 Q So did that create some kind of a conflict with respect

25 to the proposed GCAC transaction?

1 A Yes. There was a global non-compete that was in place
2 with VALT.

3 Q When did you first learn of the existence of that
4 global non-compete that you just described?

5 A I would say sometime before the end of July of 2017.

6 Q So based on that conflict that you described, did there
7 come a point in time when GCAC -- excuse me. Based on this
8 conflict you described, did there come a point in time when
9 Vitol decided not to proceed with the JV?

10 MS. GOOTT: (indiscernible).

11 THE COURT: That was the sidebar. The objection
12 is sustained.

13 BY MR. COOLEY:

14 Q You testified -- you said earlier that Vitol and GCAC
15 never executed a written JV agreement. Did I recall that
16 correctly?

17 MS. GOOTT: (indiscernible).

18 THE COURT: Overruled.

19 BY MR. COOLEY:

20 A Yes, that's correct.

21 Q Are you still negotiating the terms of a JV today?

22 A With GCAC?

23 MS. GOOTT: (indiscernible).

24 THE COURT: Overruled.

25 BY MR. COOLEY:

1 A Are you saying with GCAC?

2 Q Yeah.

3 A No, we are not.

4 Q So did the talks stop at some point?

5 A Yes, they did.

6 Q When did those talks around a JV stop?

7 A I think -- there were many discussions around the
8 structure of how this deal would be done. And I don't know
9 when exactly it stopped, but sometime before the end of July
10 into early August I would say.

11 Q And was that communicated to Mr. Brass?

12 A Yes, it was.

13 Q Nevertheless, Vitol -- did Vitol also stop doing
14 business with GCAC at that time?

15 MS. GOOTT: (indiscernible).

16 THE COURT: Overruled.

17 BY MR. COOLEY:

18 A When you say did business with GCAC, do you mean just
19 in general?

20 MS. GOOTT: (indiscernible).

21 THE COURT: Sustained.

22 BY MR. COOLEY:

23 Q After the point in time when JV talks stopped, did
24 Vitol continue to do any kind of business with GCAC?

25 A Yes. We...

1 MS. GOOTT: (indiscernible).

2 THE COURT: I don't have anything in front of me,
3 but -- do you want to --

4 MR. COOLEY: Your Honor.

5 THE COURT: I'm just saying I'm sure -- I don't
6 have anything in front of me to know one way or the other.
7 But we can take that up. I don't want to take it up with
8 the witness here.

9 MR. COOLEY: Your Honor, I'm not asking the
10 witness for a legal conclusion. I'm asking the point person
11 for Vitol if they continue to do business of any kind.

12 THE COURT: I think you said yes.

13 MR. COOLEY: Then I can ask another question if
14 the Court would like.

15 THE COURT: You're saying that there's some --
16 there are some questions about -- let me ask you this. Is
17 this something we need to take -- outside the witness, or
18 are you going to say stuff that you don't want him to hear?

19 MS. GOOTT: Probably better for him to step out so
20 that it's --

21 THE COURT: Okay. Mr. Kuo, why don't you step out
22 for a few minutes and just kind of -- some of you need to
23 just put him in a room or down the hallway. Just don't sit
24 right outside here.

25 THE WITNESS: Okay.

1 THE COURT: And I would remind you that you are
2 still under oath and you are not to discuss your testimony
3 with anyone. Anyone. Okay? Thank you. You can walk out
4 that way.

5 (Witness exits courtroom)

6 THE COURT: Mr. Patterson, are you going to need
7 the podium? Okay. Which one should I focus on, Mr.
8 Patterson?

9 MR. PATTERSON: Starting at Number 4.

10 THE COURT: Okay.

11 MR. PATTERSON: Describe in detail -- if I can --
12 I'll scroll to the bottom. These are signed by Vitol.

13 THE COURT: Okay.

14 MR. PATTERSON: Please describe in detail the
15 relationship between the Debtor and Vitol. And Number 5,
16 please describe in detail the relationship between GCAC and
17 Vitol. Both elicited objections, saying it called for a
18 legal conclusion. And all they would provide is that there
19 was a borrower/lender relationship. And that's what they're
20 stuck with, Judge. They can't go beyond that. They are
21 bound by their sworn testimony already. And to try to
22 elicit something more is improper. I think it's as simple
23 as that.

24 THE COURT: Okay.

25 MR. PATTERSON: And that was Ms. Goott's

1 objection.

2 THE COURT: What was the date of the -- I'm sorry,
3 I just wanted to make sure I wrote it down. Dated January
4 of 2022?

5 MR. PATTERSON: Yes. And it's -- and I know it's
6 out of turn and it's -- it's our Exhibit 39.

7 THE COURT: Okay. No, no, no.

8 MR. PATTERSON: We can either admit it or we can
9 do it later with Mr. Kuo.

10 THE COURT: Mr. Cooley?

11 MR. COOLEY: First of all, Your Honor, I think the
12 question specifically that was asked was it in the nature of
13 a factual inquiry, were there -- I don't recall the exact
14 phrasing, but were there -- I was asking about whether and
15 what the nature of the transactions was following that
16 point.

17 THE COURT: I think your question -- yeah.

18 MR. COOLEY: And first I would note, Your Honor,
19 that the witness has been on the stand testifying for a good
20 half hour or 45 minutes about the nature and details and
21 mechanics of transactions leading up to this point in time
22 where we've gotten to. And so the testimony that I thought
23 I was eliciting from that question and from the questions
24 that were describing the actual nature of the transactions.

25 I would note for the Court that the interrogatory

1 in its entirety says, please describe in detail the
2 relationship between the Debtor and Vitol, e.g. lender,
3 borrower, partner, joint venture, et cetera, Your Honor.
4 And the answer, objects on the grounds that it calls for a
5 legal conclusion. And then goes on to say, "Subject to the
6 foregoing; GCAC and Vitol had a borrower/lender
7 relationship." And then goes on to say, "Moreover, GCAC as
8 a fiduciary of Vitol based on the special trust and
9 confidence. The interrogatory in the question posed gives
10 examples of the type of answer it is looking for. We do
11 believe that ultimately the question of whether it is a
12 borrower/lender relationship or a JV relationship is a legal
13 conclusion that the Court will reach based upon facts
14 elicited by witnesses about what the parties did during the
15 relevant time periods and what the parties thought during
16 the relevant time periods. That's all I'm looking to elicit
17 from the witness. And I would submit to the court that it
18 is in no way foreclosed by these interrogatories and their
19 responses.

20 MR. PATTERSON: (indiscernible).

21 MR. COOLEY: May I respond, Your Honor?

22 THE COURT: Well, my question is I look at
23 Paragraph 30 and 31 of the first-amended complaint that says
24 the Debtor lawfully obtained property belonging to Vitol by
25 selling assets and related products purchased by Vitol. The

1 Debtor appropriated, lawfully obtained funds for his own
2 personal use or benefit with fraudulent intent. It seems to
3 go beyond lender/borrower relationship.

4 No, no, no, I was just -- that's an A4 claim.

5 MR. PATTERSON: (indiscernible).

6 THE COURT: No, that's embezzlement. That's --

7 MR. PATTERSON: (indiscernible).

8 THE COURT: The question is can they ask about the
9 nature of their relationship and what happened afterwards.
10 I think they can ask about it. But I think you get to cross
11 him on it. And so I think the testimony comes up, and I
12 think you're going to be able to cross him on it. I do
13 think they say that the Debtor willfully and maliciously
14 caused injury through specific actions and there's been harm
15 to them. I just think it's -- I agree with you, I think the
16 interrogatory certain describes the business relationship as
17 lender/borrower. I think he can describe it and you can
18 come back and cross him on it. But I think he gets to talk
19 about it. I think you're going to be able to cross him on
20 it. And maybe -- I agree with you, they're going to be have
21 to be held to the pleadings. I just don't know enough yet
22 to know what they are arguing by saying were there other
23 transactions after this JV relationship broke down. That's
24 all I know.

25 MR. PATTERSON: (indiscernible).

1 THE COURT: I guess what I'm saying is you get to
2 cross him on it, and everybody gets held to the pleadings.
3 I agree with you there.

4 MR. PATTERSON: (indiscernible).

5 THE COURT: No, no, no. Understood.

6 MR. PATTERSON: (indiscernible).

7 MR. COOLEY: Your Honor, I object to the sidebars.
8 We've gone well beyond this objection.

9 THE COURT: Nobody's here. We can talk about it.
10 Okay. Go ahead.

11 MR. COOLEY: Just two points if I may. Just very
12 briefly, Your Honor.

13 THE COURT: Get close to the mic. Make sure we
14 can hear you.

15 MR. COOLEY: First, just to be clear, we are not
16 arguing the issue today. But I disagree with the contention
17 that embezzlement under 523(a)(4) requires an employee
18 relationship. In the Fifth Circuit, the standard looks to
19 whether property was entrusted to the Debtor. And whether
20 or not -- you know, commonly it arises in an employee
21 context, but that is not a stated element of the claim.
22 That's not for today. I just wanted to state that for the
23 record.

24 Second, Your Honor, if the testimony to be
25 elicited was solely and exclusively to course onto the black

1 and white statements in a complaint, trials would last 15
2 minutes. The point is whether or not there has been notice
3 to the party of the nature of the allegations. The
4 testimony is always going to go into detail and the question
5 is whether it is relevant to the claims as pled, as we have
6 said throughout this process. And clearly the Court has
7 come to understand at this point a borrower/lender
8 relationship can take a variety of forms. It isn't
9 necessarily a promissory note. It can arise in a variety of
10 contexts. The Court has heard some testimony about that
11 already and we are seeking to proceed in that vein. And
12 ultimately the Court will decide whether such a relationship
13 existed and whether it even matters to the outcome of the
14 trial.

15 THE COURT: Let's bring Kuo back in. I'm going to
16 allow the testimony to continue. I'm not going to make any
17 judgments about -- everybody's rights are reserved. Maybe
18 that's the better way of saying it. Certainly Brass has
19 every right to come in and argue if you're arguing outside
20 of the pleadings. And we'll take that up and I'll make that
21 determination at an appropriate time. But for now, the
22 testimony comes in. I think you can talk about it.

23 Mr. Cooley, what do you think? You have an hour
24 or less? What do you think from a timing standpoint? I'm
25 not trying to rush you. I'm just thinking about --

1 MR. COOLEY: No, no. I was thinking about that
2 very thing myself, Your Honor. It's been going a little
3 more slowly than I anticipated based on -- as a function of
4 my prior estimate.

5 THE COURT: Mr. Kuo is in the room, so I just want
6 you to give a number.

7 MR. COOLEY: Halfway mark.

8 THE COURT: Okay. Let's just work through the
9 direct.

10 Mr. Kuo, why don't you come up? And I would
11 remind you, sir, that you are still under oath. Okay? Mr.
12 Cooley is going to ask you a brand new question, because I
13 don't expect you to know what the last one was.

14 Mr. Kuo, do you understand that you are still
15 under oath?

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay. Thank you.

18 CONTINUED DIRECT EXAMINATION OF ERIC KUO

19 BY MR. COOLEY:

20 Q After the JV talks ended as you described, did Vitol
21 and GCAC continue to do business in any way?

22 A Yes. Vitol --

23 Q I think you answered my question. I'll ask you the
24 next one. What was the nature of that business?

25 A Vitol agreed to be the financing partner for GCAC,

1 essentially acting as their bank.

2 Q Was that proposed to -- was that communicated to GCAC?

3 A Yes, it was.

4 Q Was it communicated to Mr. Brass?

5 A Yes, it was.

6 Q Do you recall around when?

7 A I believe it was that timeframe in July or early
8 August.

9 MR. COOLEY: Your Honor -- or Ms. Mehta, could I
10 have Vitol Exhibit 14? She may need control back.

11 THE COURT: Hold on a second. Ms. Mehta, let me
12 know if you still have it. If not --

13 BY MR. COOLEY:

14 Q I'll put up on the screen what has been marked as
15 Exhibit 14. Do you recognize the document on the screen
16 before you?

17 A Yes, I do.

18 Q Can you identify it to the Court?

19 THE COURT: Can you scroll through everything? I
20 want to make sure that we do this once if there's anything
21 there.

22 MR. COOLEY: That's exactly what I was looking to
23 make sure of, Your Honor.

24 THE COURT: All right. If not, we can go hard
25 copy if we have to. I just don't want to -- I just want you

1 to take a look at -- I'm going to say nothing.

2 MR. COOLEY: I think this is a two-page document.

3 Ms. Mehta, can we have the two pages side-by-side?

4 BY MR. COOLEY:

5 Q What's before you is now a two-page exhibit marked
6 Exhibit 14. Looking at the two pages, do you recognize this
7 document?

8 A Yes, I do.

9 Q Can you identify these two pages to the Court?

10 A This was an email sent by Mr. Brass on August 21st,
11 2017.

12 THE COURT: Let me stop you. Ms. Mehta, I'm going
13 to want you to just let him describe stuff, because I get
14 nervous when I see folks doing things. It could be an
15 unintentional way of leading the witness. So let him just
16 talk and then let counsel then direct you to where it want
17 you to go. I'm sure it's done a bunch of different ways,
18 and I'm not making any assumptions about what you're doing.
19 I just -- for me, just for purposes of me, I want him to be
20 able to talk. And then if counsel directs you to highlight
21 something, you are free to use every bit of it. I just want
22 to make sure that it's done at the direction of counsel and
23 not through any other way. And this is just a Lopez thing.
24 You go into another court, you can do it any other way.
25 It's just for me.

1 Excuse me, Mr. Kuo, can you please describe what
2 you -- describe the document?

3 THE WITNESS: This is an email sent by Mr. Brass
4 to me on August 21st of 2017 titled Vitol Interim Financing
5 Structure Bullets.

6 BY MR. COOLEY:

7 Q Do you recall -- are you identified as a recipient of
8 this email?

9 A Yes, I am.

10 Q Do you recall receiving this email?

11 A Yes, I do.

12 Q And do you recall -- can you identify the second page,
13 by the way, of this exhibit?

14 A These were the discussion points that Vitol and GCAC
15 were discussing with regards to a financing structure.

16 Q And when this email came to you, did it have the
17 attachment to it?

18 A I believe so.

19 Q Do you recognize the attachment?

20 A I do.

21 MR. COOLEY: I would move for the admission of
22 Vitol Exhibit 14.

23 THE COURT: Any objection?

24 Okay, Vitol Exhibit 14 is admitted.

25 (Vitol Exhibit 14 Admitted into Evidence.)

1 BY MR. COOLEY:

2 Q What did you understand to be the purpose of this email
3 communication and the attachment?

4 MS. GOOTT: (indiscernible).

5 MR. COOLEY: I asked the witness's understanding.

6 THE COURT: Yeah. Why don't you ask a different
7 question.

8 BY MR. COOLEY:

9 Q Were you surprised to get this email?

10 MS. GOOTT: (indiscernible).

11 THE COURT: Overruled.

12 BY MR. COOLEY:

13 A No, I was not surprised to receive this.

14 Q Why is that?

15 A Because this was just a -- this was an email which put
16 into writing a structure that we had been discussing.

17 Q And did that structure -- and just generally speaking,
18 what was the structure that was being described at this time
19 as you understood it?

20 A This structure would be put in place outside of the
21 potential JV that we had initially discussed. So this was a
22 financing agreement or the bullet point for a financing
23 structure that we were going to -- Vitol was going to
24 provide for GCAC because we were not able to go forward with
25 the initial structure of the JV as it was proposed.

1 Q Did Vitol accept the terms as they're laid out in this
2 email and attachment?

3 A Well, we did finalize all the points, meaning that
4 there were some areas here that we never formalized, such as
5 the interest rate on the financing. So no, we did not
6 finish all of the points.

7 Q Did Vitol ever communicate to GCAC terms under which it
8 would be willing to proceed with GCAC?

9 A I'm sorry, I don't really exactly understand the
10 question.

11 Q Did GCAC ever communicate -- I did it again. Did Vitol
12 ever communicate to GCAC under what terms it would be
13 willing to proceed with an arrangement?

14 A Not every point, but the majority of points, yes.

15 Q What points that you recall were conveyed to GCAC?

16 A The fact that Vitol was willing to finance --

17 MS. GOOTT: (indiscernible).

18 THE COURT: Just taking it as his understanding
19 and not that there's anything that's been locked down. But
20 that's a fair point. That's a fair point. So I will
21 sustain the objection to the extent it's referring to a
22 document that's not been admitted into evidence.

23 BY MR. COOLEY:

24 Q These terms that were communicated to GCAC, were they
25 communicated in writing?

1 A The main point of the structure are here in this
2 document.

3 Q Were there other deal terms not identified in this term
4 sheet?

5 MS. GOOTT: (indiscernible).

6 THE COURT: My understanding of the question --
7 I'm going to overrule based on -- my understanding of the
8 question is was there a deal in place that included some
9 terms that are not listed in this document, other deal
10 terms.

11 THE WITNESS: That's not the way I understand the
12 question.

13 THE COURT: Okay. Well then I'm going to sustain
14 her objection because I misunderstood the question then.

15 BY MR. COOLEY:

16 Q Did Vitol communicate deal terms to GCAC that are not
17 reflected in this particular document?

18 A The term of repayment is not set forth in this
19 document.

20 Q Did you ever have a conversation with Mr. Brass or
21 anyone else about that particular deal term?

22 MS. GOOTT: (indiscernible).

23 THE COURT: Overruled.

24 BY MR. COOLEY:

25 A Yes. We spoke many times about the repayment of funds

1 that were collected by GCAC that were due Vitol over the
2 course of many months.

3 Q And what on that subject did you communicate to GCAC?

4 A Well, first of all, the communication was
5 mainly done by our finance team. And --

6 MS. GOOTT: (indiscernible).

7 THE COURT: Sustained. The question as what did
8 you communicate to Mr. Brass.

9 BY MR. COOLEY:

10 A So I spoke to Mr. Brass multiple times about repaying
11 the amounts of money that were due Vitol from GCAC over the
12 course of several months.

13 Q And what was the nature of those conversations?

14 A They were requests for payment because I was receiving
15 -- I was receiving numerous emails --

16 MS. GOOTT: (indiscernible).

17 THE COURT: Sustained.

18 BY MR. COOLEY:

19 Q To your knowledge, did Vitol and GCAC ever reach
20 agreement on terms by which they would continue to engage in
21 purchases and sales of asphalt after the time of this email?

22 A I'm not sure I fully understand the question.

23 Q I will rearrange it and see if it helps. Following
24 this email, did Vitol and GCAC ever reach agreement on terms
25 by which they would continue to engage in transactions

1 involving the purchase and sale of asphalt?

2 A Vitol notified GCAC that we would continue financing
3 their operation.

4 MS. GOOTT: (indiscernible).

5 THE COURT: Overruled.

6 BY MR. COOLEY:

7 Q And under those terms, who would pay the purchase price
8 associated with the purchase of any materials?

9 MS. GOOTT: (indiscernible).

10 THE COURT: Sustained.

11 BY MR. COOLEY:

12 Q After the time of this email, did Vitol and GCAC engage
13 in any more transactions together involving the purchase of
14 asphalt?

15 A Yes.

16 Q After the time of this email, did Vitol and GCAC engage
17 in any transactions involving the sale of asphalt?

18 A Yes.

19 Q In connection with those purchase transactions, who
20 would pay the purchase price to the seller?

21 A Vitol would.

22 Q And who would then own the product that was purchased?

23 A Vitol would retain title of the product.

24 Q Who would pay the expenses associated with that
25 product?

1 A Vitol paid all the expenses.

2 Q And when the product was sold, who was supposed to get
3 the sale proceeds?

4 A Vitol was supposed to.

5 Q And to the extent that the sale proceeds didn't cover
6 all the expenses, who was supposed to be liable with
7 ultimately paying those expenses?

8 MS. GOOTT: (indiscernible).

9 THE COURT: Sustained. I think it assumes facts
10 not in evidence. It assumes...

11 BY MR. COOLEY:

12 Q Were there ever any of these --

13 THE COURT: I will also say it was vague. I don't
14 know who the who in your hypo refers to when there's
15 potentially multiple parties. Maybe you can just ask it in
16 a more direct way.

17 BY MR. COOLEY:

18 Q In these transactions you're describing, was the sale
19 price that Vitol -- that was obtained from the product sold
20 ever insufficient to cover all the expenses associated with
21 it?

22 MS. GOOTT: (indiscernible).

23 MR. COOLEY: Your Honor, I'm seeking to elicit a
24 fact.

25 THE COURT: Less compound. Why don't you ask it

1 in another way?

2 BY MR. COOLEY:

3 Q Were the sale transactions ever such that they did not
4 generate sufficient sale proceeds to cover all of the
5 associated expenses?

6 A Yes.

7 Q Do you have an understanding as to who as between Vitol
8 and GCAC was to be liable for those additional expenses?

9 MS. GOOTT: (indiscernible).

10 THE COURT: Well, I think he -- I think I'm going
11 to overrule that. I think -- you can answer.

12 BY MR. COOLEY:

13 A Well, GCAC would be responsible ultimately for the
14 expenses that were not received above and beyond the sales
15 price.

16 Q Did you ever participate in conversations with Mr.
17 Brass about these expectations of who would pay and who
18 would -- so forth?

19 MS. GOOTT: (indiscernible).

20 THE COURT: It was the last part that got you
21 there. So I will sustain the objection.

22 BY MR. COOLEY:

23 Q These various -- with respect to the matters of the
24 last few questions, who was expected -- I have to -- did you
25 ever participate in conversations with Mr. Brass about -- to

1 discuss Vitol's expectation of who would fund the purchase
2 price for purchase transactions?

3 A Well, Vitol was funding the purchase price. Now, the
4 sales proceeds were understood to be received by Vitol as
5 well as all the sales proceeds.

6 Q Was that understanding to your knowledge ever --

7 MS. GOOTT: (indiscernible).

8 THE COURT: Hold on a second. Hold on a second.

9 MS. GOOTT: (indiscernible).

10 THE COURT: Overruled. You can ask another
11 question.

12 BY MR. COOLEY:

13 Q Was that ever communicated, those expectations ever
14 communicated to Mr. Brass?

15 A Yes, fully.

16 Q Was Vitol's expectation that GCAC would ultimately be
17 liable for any additional expenses communicated to Mr.
18 Brass?

19 MS. GOOTT: (indiscernible).

20 THE COURT: Sustained.

21 BY MR. COOLEY:

22 Q You testified that Vitol expected GCAC to pay any
23 excess expenses not covered by sale proceeds. Was that ever
24 communicated to Mr. Brass?

25 MS. GOOTT: (indiscernible).

1 MR. COOLEY: Your Honor, there's no way to --

2 THE COURT: Overruled. Overruled.

3 BY MR. COOLEY:

4 A Yes. All costs and expenses, ancillary costs, costs of
5 doing the business need to be paid by GCAC ultimately in the
6 end.

7 Q To your knowledge did Mr. Brass ever represent to Vitol
8 that GCAC would perform in accordance with those terms?

9 MS. GOOTT: (indiscernible).

10 THE COURT: It's also leading. Sustained.

11 BY MR. COOLEY:

12 Q Did Mr. Brass ever represent to you that GCAC would
13 perform in accordance with these terms?

14 MS. GOOTT: (indiscernible).

15 THE COURT: That one I think worked. I'm going to
16 overrule the objection.

17 BY MR. COOLEY:

18 A I'm sorry, could you repeat that questions?

19 Q Did Mr. Brass ever represent to you that GCAC would
20 perform in accordance with these terms?

21 MS. GOOTT: (indiscernible).

22 THE COURT: Overruled.

23 BY MR. COOLEY:

24 A Yes. We spoke about that many times, that he would be
25 responsible for the payments.

1 Q Did GCAC in fact -- did GCAC actually remit -- during
2 the time period following this email, did GCAC engage in
3 sale transactions involving product that Vitol had
4 purchased?

5 THE COURT: You started one question and then you
6 asked another one. So I'm going to -- you talked about
7 remitting and then you asked another question. Maybe you
8 can just -- I didn't understand which question you were
9 going to ask.

10 MR. COOLEY: Yes, Your Honor.

11 BY MR. COOLEY:

12 Q After the time of this email, did GCAC engage in sale
13 transactions involving product that had been purchased by
14 Vitol?

15 MS. GOOTT: (indiscernible).

16 THE COURT: Overruled.

17 BY MR. COOLEY:

18 A Yes. There were multiple sales that GCAC made to
19 counterparts and received funds for the sales of the
20 product.

21 Q And so were any of those sale proceeds received by GCAC
22 instead of Vitol?

23 A Yes.

24 Q Did GCAC remit all of those sale proceeds to Vitol?

25 MS. GOOTT: (indiscernible).

1 THE COURT: Overruled. He can testify if he
2 knows.

3 BY MR. COOLEY:

4 A No. Not all the funds were remitted to Vitol over the
5 course of the sales, the overall sales.

6 Q How long did this arrangement that you described
7 continue?

8 A It continued until the end of 2017.

9 Q And why did it stop?

10 A We notified GCAC sometime in I would say September that
11 we were not willing to move forward with the financing
12 arrangement past the end of the year.

13 MR. COOLEY: Ms. Mehta, could I have Vitol Exhibit
14 25?

15 BY MR. COOLEY:

16 Q This is -- and for the record, I've put up on the
17 screen the first page of a three-page email -- excuse me, a
18 three-page document. And Mr. Kuo, would you look at the
19 document on the screen? And Ms. Meta, would you slowly
20 scroll through the three pages? And then if you would take
21 us back to Page 1.

22 Mr. Kuo, do you recognize the document up on the screen
23 which I have marked as Vitol Exhibit 25?

24 A I do.

25 Q Can you identify it to the Court?

1 A The most recent one was an email sent by Dan Sergeant
2 to Chris Bake and numerous other people.

3 Q Were you a recipient of this email?

4 A Yes.

5 Q Do you recall receiving this email?

6 A I do.

7 Q Does it appear to be a true and correct copy of that
8 email?

9 A Yes, it does.

10 MR. COOLEY: Your Honor, I move to admit Vitol
11 Exhibit 25.

12 THE COURT: Any objection?

13 MS. GOOTT: (indiscernible).

14 THE COURT: Vitol Exhibit 25 is admitted.

15 (Vitol Exhibit 25 Admitted into Evidence.)

16 BY MR. COOLEY:

17 Q And I want to direct your attention -- still on the
18 first page -- to the second paragraph of the second email.
19 And just so you can find it, the paragraph begins with the
20 words, "Vitol have advised". Do you see that paragraph in
21 the middle of the page?

22 MR. COOLEY: Your Honor, I just want to make sure
23 we're all on the same paragraph.

24 THE COURT: Then just say that. Just point him to
25 a paragraph.

1 MR. COOLEY: All right.

2 BY MR. COOLEY:

3 Q In the second email on the page, the second paragraph,
4 would you read to me the first three words of the paragraph?

5 A "Vitol have advised."

6 Q Thank you. And I would ask you to -- in this sentence
7 -- well, first of all, this was an email from -- this
8 particular email came from whom according to this document?

9 A It was sent by Chris Bake.

10 Q Do you know who that is?

11 A Yes, I do.

12 Q Who is Mr. Bake?

13 A Mr. Bake is a board member of Vitol.

14 Q In the first sentence of that Paragraph, Mr. Bake
15 writes the following.

16 MS. GOOTT: (indiscernible).

17 MR. COOLEY: Your Honor, this is neither leading
18 nor coaching. I want to put a sentence into the record and
19 then ask the witness a question about the sentence.

20 MS. GOOTT: (indiscernible).

21 THE COURT: I think everybody is coaching now. I
22 think you can just ask a question.

23 BY MR. COOLEY:

24 Q Mr. Kuo, would you read to yourself the first sentence?

25 MS. GOOTT: (indiscernible).

1 THE COURT: I think he's allowed to ask him to
2 read a question and then ask him a question about it so that
3 he knows what he's talking about. I think that's fair. You
4 know, rights are reserved. I am overruling her objection.

5 BY MR. COOLEY:

6 A I'm sorry, which sentence did you want me to read? The
7 very first sentence?

8 Q Yes, sir.

9 A Of the second email.

10 Q Correct. Do you agree with the statement made?

11 MS. GOOTT: Objection. (indiscernible).

12 THE COURT: I'm not sure coaching is a valid
13 objection. Overruled. But I got the point. But if we're
14 going to play by the rules, then -- if it's what you want,
15 then we've all got to play by the rules. And that's not an
16 objection.

17 MS. GOOTT: (indiscernible).

18 THE COURT: That's sustained.

19 BY MR. COOLEY:

20 Q How does Mr. Bake describe the nature of the current
21 arrangement?

22 MS. GOOTT: (indiscernible).

23 THE COURT: Overruled.

24 BY MR. COOLEY:

25 A I'm sorry. You asked me how Mr. Bake characterizes...

1 Q How does he describe the current arrangement in that
2 sentence?

3 MS. GOOTT: (indiscernible).

4 THE COURT: I'm going to sustain that objection.
5 I don't think it's -- now I'm coaching. I don't think it's
6 for you to testify as to what his understanding is or how
7 he's phrasing stuff. He stated words. They are what they
8 are. So I think you can ask a question about that.

9 BY MR. COOLEY:

10 Q Did you ever discuss the nature of GCAC's relationship
11 to Vitol with Mr. Bake?

12 A Yes.

13 Q Did you ever discuss with Mr. Bake your understanding
14 of the nature of the relationship with GCAC?

15 A Yes.

16 Q Based on those discussions, do you know if Mr. Bake had
17 an understanding of the nature of the relationship?

18 A I believe he did, yes.

19 Q And what was that understanding?

20 MS. GOOTT: (indiscernible).

21 THE COURT: What's your response, Counsel?

22 MR. COOLEY: Your Honor, I've not asked what Mr.
23 Bake has ever said. I've asked what the witness's
24 understanding was. Counsel is welcome to cross-examine to
25 investigate the basis of that understanding.

1 THE COURT: I'm going to overrule. You can answer
2 the question.

3 BY MR. COOLEY:

4 A I'm sorry, can you repeat the question?

5 Q What is your understanding of what Mr. Bake's
6 understanding was of the nature of the relationship?

7 MS. GOOTT: (indiscernible).

8 THE COURT: Sustained.

9 BY MR. COOLEY:

10 Q Over the course of the relationship between Vitol and
11 GCAC, how were -- how was information about purchases and
12 sales communicated between the two?

13 A They were generally -- they were communicated either
14 through a phone call -- well, phone call and then an email
15 or text.

16 Q What about hedging transactions? How if at all were
17 those communicated?

18 A Those were sent initially by text or email and always
19 confirmed.

20 MR. COOLEY: Ms. Mehta, could I have Vitol Exhibit
21 3, please?

22 BY MR. COOLEY:

23 Q Mr. Kuo, I have put up on the screen what has been
24 marked as Exhibit 3, which is a one-page document. Do you
25 recognize this document?

1 A I do.

2 Q Can you identify it to the Court?

3 A This is an email from Patrick Perugini sent to me and
4 the contracts group and the broker, July 17th.

5 Q How many emails are on the page?

6 A There are two.

7 Q Do you recognize both emails?

8 A Yes, I do.

9 Q And are you -- were you a recipient of this email?

10 A Yes.

11 Q Do you recall receiving this email?

12 A I do.

13 Q Does it appear to be a true and correct copy of the
14 email that you recall?

15 A It does.

16 MR. COOLEY: I move the admission of Vitol Exhibit
17 3.

18 THE COURT: Any objection? Vitol Exhibit 3 is
19 admitted.

20 (Vitol Exhibit 3 Admitted into Evidence.)

21 BY MR. COOLEY:

22 Q Start briefly with the second email at the bottom. Do
23 you know the identity of the sender of the earlier email at
24 the bottom of the page?

25 A Yes, I do.

1 Q Who is that?

2 A Reggie Nichols, who is the admin person for a broker
3 called Market Exchange.

4 Q Do you know why you were copied on Mr. Nichols' email?

5 A Ms. Nichols.

6 Q I apologize. Do you know why you were copied on Ms.
7 Nichols' email?

8 A Yes. She was just recapping the review that was done
9 by GCAC.

10 Q In the -- coming back to the email at the top of the
11 page from Mr. Perugini, do you know why Mr. Perugini was
12 asking if you could hedge the remaining barrels?

13 MS. GOOTT: (indiscernible).

14 THE COURT: He can answer if he knows. Overruled.
15 BY MR. COOLEY:

16 A Yes. Well, each deal that was entered into, we agreed
17 that everything would be hedged. And so in this email, he
18 is asking me to hedge the deal that they had just completed.

19 MR. COOLEY: Could I have Vitol Exhibit 12,
20 please?

21 BY MR. COOLEY:

22 Q I have put up on the screen what's been marked as
23 Exhibit 12. This is a two-page document.

24 MR. COOLEY: Ms. Mehta, could we get both pages?

25 BY MR. COOLEY:

1 Q Mr. Kuo, looking at the two pages up on the screen, do
2 you recognize this document?

3 A I do.

4 Q Can you identify it to the Court?

5 A It's an -- there's two parts. There's one that was
6 sent by Mr. Perugini to myself and some other people within
7 GCAC and Rio Energy stating the specifics of a fuel
8 transaction.

9 Q Do you recognize the email?

10 A I do.

11 Q Do you recall -- and are you a sender or a recipient of
12 each of these two emails?

13 A On the second email, I am the sender.

14 Q And by the second email, are you referring to -- which
15 one?

16 A The top one.

17 Q And were you a recipient of the earlier email below it?

18 A Yes.

19 Q And does this appear to be a true and correct copy of
20 the email as you recall it?

21 A Yes, it is.

22 MR. COOLEY: Your Honor, I move the admission of
23 Vitol Exhibit 12.

24 THE COURT: Is there any objection? Vitol Exhibit
25 12 is admitted.

1 (Vitol Exhibit 12 Admitted into Evidence.)

2 BY MR. COOLEY:

3 Q Let's start with the earlier of the two emails from Mr.
4 Perugini. And I'll just start by asking if you have an
5 understanding as to why Mr. Perugini would have sent you
6 this email.

7 A Yes.

8 Q What is that understanding?

9 MS. GOOTT: (indiscernible).

10 THE COURT: What's your response, Counsel?

11 MR. COOLEY: Your Honor, this is -- well...

12 THE COURT: What's your objection? What's your
13 response to relevance. I should break it out. What's your
14 objection to relevance?

15 MR. COOLEY: Your Honor, the --

16 THE COURT: Response to the objection to
17 relevance. I apologize.

18 MR. COOLEY: We submit that the email -- I'm
19 struggling with how to respond without drawing a coaching
20 objection, Your Honor. Because --

21 THE COURT: No, it's a relevance objection. So
22 you're going to have to put on the record why you think it's
23 relevant.

24 MR. COOLEY: Your Honor, it's relevant as -- I'm
25 sorry?

1 THE COURT: I'm saying Ms. Goott -- I guess it
2 doesn't mean that you have to -- I think there's a way you
3 can not testify about a document, but I think you can answer
4 a relevance objection.

5 MS. GOOTT: (indiscernible).

6 THE COURT: I'm with you. No, no, no. We're on
7 the same -- yeah. There's obviously a more artful way of
8 describing -- I apologize. That's the better way to
9 describe it.

10 MS. GOOTT: (indiscernible).

11 MR. COOLEY: Candidly, Your Honor, I confess I'm
12 not sure I understand the objection as is articulated. I'll
13 be happy to try and ask another question. Your Honor, the -
14 -

15 THE COURT: My understanding is -- what's the
16 relevance of asking this witness what Mr. Perugini's --
17 what's the relevance of asking this witness what his
18 understanding of why Mr. Perugini sent him this email?

19 MR. COOLEY: Your Honor --

20 THE COURT: Ms. Goott, did I get that right?

21 MS. GOOTT: (indiscernible).

22 THE COURT: Okay. Okay. Okay.

23 MR. COOLEY: Your Honor, I will ask the question a
24 different way.

25 THE COURT: Okay.

1 BY MR. COOLEY:

2 Q Were you surprised to get this email from Mr. Perugini?

3 MS. GOOTT: (indiscernible).

4 THE COURT: I will sustain that.

5 BY MR. COOLEY:

6 Q Is this the first email you'd ever received from Mr.

7 Perugini?

8 A No.

9 Q Was this the first email with information of this type
10 that you'd ever received from Mr. Perugini?

11 MS. GOOTT: (indiscernible).

12 THE COURT: Overruled.

13 BY MR. COOLEY:

14 A No, this is not the first type of email I've received
15 from Mr. Perugini.

16 Q Just for the Court's benefit, what is -- do you have --
17 do you understand the information that's provided in that
18 email from Mr. Perugini?

19 A Yes, I do.

20 Q Does that information have meaning to you?

21 A Yes, it does.

22 Q I would like you to take me through it. And let's
23 start with -- and let's start with the first line of the
24 email below the subject line. Would you read me that first
25 line so I know we're looking at the same thing?

1 A "Deal Number One, Rio inventory in Mobile."

2 Q There's a series of lines underneath it. Does that
3 information provided there have meaning to you?

4 A Yes, it does.

5 Q And can you tell me essentially what it is that that
6 information conveys to you?

7 A It's telling me that Vitol is purchasing oil from Hunt
8 refining in Mobile at a certain price in a certain
9 timeframe.

10 Q Are you telling me Mr. Perugini was telling you that
11 Vitol was going to purchase product?

12 MS. GOOTT: (indiscernible).

13 THE COURT: Overruled.

14 BY MR. COOLEY:

15 A Yes. Because the deals were done because --

16 MS. GOOTT: (indiscernible).

17 THE COURT: Overruled.

18 BY MR. COOLEY:

19 A GCAC concluded these deals on their own cognizance and
20 informed me after the fact what the deal terms and the
21 specifics of the deal were by an email like this. This is
22 very common, the recap of the particular deal that they had
23 done.

24 Q And remind me again, who is Mr. Perugini in all of
25 this?

1 A He was an employee of GCAC and the primary trader that
2 I dealt with.

3 Q And so still just staying on Deal Number One, that
4 section of the email, what did you do I think that -- what
5 did you do with that information when you got it?

6 MS. GOOTT: (indiscernible).

7 THE COURT: Overruled.

8 BY MR. COOLEY:

9 A I would enter the specific deal into Vitol's trading
10 system and subsequently hedge the particular deal.

11 Q Now, this Deal Number One you said had Vitol as the
12 buyer. Did Vitol have to pay a purchase price of any kind
13 associated with that?

14 A If you're asking if Vitol had to remit funds for this
15 purchase? Is that what you're asking?

16 Q Yes, that is what I'm asking.

17 A The answer is yes.

18 Q And to your knowledge did Vitol do so?

19 A I don't receive payments, but I assume that we did.

20 Q And I want to ask you about the second-to-last line
21 again of this Deal One section. The line begins with the
22 word credit. Do you see that line?

23 A Yes, I do.

24 Q Do you -- does the information provided in that line
25 have meaning to you?

1 MS. GOOTT: (indiscernible).

2 THE COURT: Overruled.

3 BY MR. COOLEY:

4 A Yes, it does.

5 Q Can you tell the Court what that information means to
6 you?

7 A In this --

8 MS. GOOTT: (indiscernible).

9 THE COURT: That's my understanding.

10 MR. COOLEY: It is, Your Honor. I'm trying not to
11 read it into the record.

12 THE COURT: That's my understanding.

13 MR. COOLEY: But yes, just that one line.

14 BY MR. COOLEY:

15 A In the line under credit, it says, mutual between
16 credit. Three ROI, which stands for receipt of invoice. So
17 in this particular credit term, Vitol was obliged to pay for
18 the product three days after it receives the invoice.

19 Q Moving down the page now to the next section of the
20 email. Do you see that?

21 A Deal Number Two?

22 Q Yes.

23 A Yes.

24 Q Do you understand what's being communicated to you in
25 that section that begins Deal Number Two?

1 A Yes, I do.

2 Q And what is that?

3 MS. GOOTT: (indiscernible).

4 THE COURT: Overruled.

5 BY MR. COOLEY:

6 A Yes, I understand the deal.

7 Q And would you explain to the Court what that
8 information under the heading Deal Number Two means to you?

9 A This is whereby Vitol sells the oil to GCAC under a
10 certain time period and a certain price and a certain volume
11 under certain credit terms.

12 Q You said the oil. Which oil are you referring to?

13 A Under quality it states the specifics of the oil being
14 sold.

15 Q And was there any credit term associated with this Deal
16 Number Two?

17 A Yes. Under credit, it says open five days after
18 receipt of invoice.

19 Q And what does that mean to you?

20 A That means that five days after they receive an invoice
21 from Vitol, GCAC is obliged to pay for the product.

22 Q Now let's just look at the last piece at the bottom of
23 Page 1 that continues on to Page 2. Do you see that third
24 section of the email there?

25 A I do.

1 Q Would you tell me what words it begins with just so we
2 are oriented correctly?

3 A Back up to Deal Number Two.

4 Q Do you understand the information that's provided in
5 that third section?

6 A I do.

7 Q Does that information have meaning to you?

8 A Yes, it does.

9 Q What does that information -- what do you understand
10 those lines to communicate to you?

11 A This is the specifics of the deal that GCAC made with
12 Gunvor.

13 Q On this -- relating in any way to the deals described
14 in the rest of the inventory -- the rest of the email?

15 MS. GOOTT: (indiscernible).

16 THE COURT: Sustained.

17 BY MR. COOLEY:

18 Q Is this backup section -- does it bear any relationship
19 to the two sections that precede it?

20 MS. GOOTT: (indiscernible).

21 THE COURT: Overruled.

22 BY MR. COOLEY:

23 A Yes, it does. It gives the -- it gives the specifics
24 of what GCAC did with the oil after it purchased it. They
25 subsequently sold the product to Gunvor. So here you can

1 see it says seller, GCAC, buyer, Gunvor. So this is -- this
2 shows the transaction flow of what happened after GCAC
3 purchased the product.

4 Q And would there have been a purchase price associated
5 with that transaction between GCAC and Gunvor?

6 MS. GOOTT: (indiscernible).

7 THE COURT: If he knows. Overruled.

8 BY MR. COOLEY:

9 Q Do you know?

10 MS. GOOTT: (indiscernible).

11 THE COURT: Overruled.

12 BY MR. COOLEY:

13 A Yes. It states here that the sales price from GCAC to
14 Gunvor is \$251.

15 Q And are there any credit terms associated with whether
16 or when that is supposed to be paid?

17 A Yes. Here it states that Gunvor is to remit payment to
18 GCAC three days after the receipt of invoice.

19 Q Do you know whether the product described in the backup
20 deal at the bottom bears any relationship to the product
21 described in deal number one at the top?

22 A Yes. It looks to be the exact same product that was
23 purchased.

24 Q Now, after all of that, you respond in the email above.
25 Do you see your response?

1 A Yes, I do.

2 Q Do you recognize it?

3 A Yes, I do.

4 Q Do those words have meaning to you? The words and
5 symbols and such?

6 A Yes.

7 Q Would you explain to the Court what information you are
8 communicating with that email?

9 MS. GOOTT: (indiscernible).

10 THE COURT: Overruled.

11 BY MR. COOLEY:

12 A I am communicating to Mr. Perugini and Mr. Brass that I
13 am hedging the deal that was done by GCAC. So here it says
14 on the -- on 10KB, which is 10,000 barrels, I purchased as a
15 hedge 10,000 barrels of (indiscernible) high sulfur -- HS
16 stands for high sulfur fuel -- at the price of \$44.50.

17 Q And why did you send that email?

18 A Because all the deals that were done, we agreed that
19 they would be hedged upon completion.

20 MR. COOLEY: Ms. Mehta, could I have Vitol Exhibit
21 18? And this is another two-page document. Could I get the
22 two pages side-by-side, please? Thank you.

23 BY MR. COOLEY:

24 Q Mr. Kuo, I have put up on the screen the two pages of
25 what I have marked as Exhibit -- Vitol Exhibit 18. First of

1 all, take a look at the two pages and tell me if you
2 recognize the document.

3 A Yes, I recognize this.

4 Q Can you identify it to the Court?

5 A The first email is an email from Patrick Perugini to
6 myself and Mike Ruzic along with other employees of GCAC.

7 Q And do you recognize the second email as well?

8 A The one I sent?

9 Q Yes, sir.

10 A Yes, I do.

11 Q And are you either the sender or recipient of each of
12 these two emails?

13 A Yes.

14 Q And does this document appear to be a true and correct
15 copy of the document that you recall?

16 A Yes, it is.

17 MR. COOLEY: I move the admission of Vitol Exhibit
18 18.

19 THE COURT: Any objection? Vitol Exhibit 18 is
20 admitted.

21 (Vitol Exhibit 18 Admitted into Evidence.)

22 BY MR. COOLEY:

23 Q Now, I want to start again -- and we're not going to go
24 through in quite so much detail this time, but I want to
25 start with the first line of Mr. Perugini's email. Do you

1 see that?

2 A Yes, I do.

3 Q Would you read the line for me so I know we are
4 oriented in the same place?

5 A Deal Number One, Rio Inventory Overview.

6 Q And does the information provided underneath that line
7 have meaning to you?

8 A Yes, it does.

9 Q And just generally what is being communicated -- what
10 is -- what does this information mean to you?

11 A This is GCAC recapping the deal that Vitol sold product
12 to GCAC and just sending the recap of the specific terms of
13 the deal.

14 Q And then if we move down to the bottom of the page,
15 there is a section in blue with a heading of its own. Do
16 you see that?

17 A Backup for Deal Number Two?

18 Q Yes. And what is that information -- what do you
19 understand that information to communicate to you?

20 A This is the -- this is the corollary to the deal that
21 was done from Vitol to -- the sale from Vitol to GCAC and
22 showing us that Vitol -- I mean GCAC went forward and sold
23 the product to VALT.

24 Q And what did you do with this information when you
25 received it?

1 A Well, first off, I hedged the deal. And then second of
2 all, I entered the deal into our trading system.

3 Q Are these the only two emails you ever got from Mr.
4 Perugini communicating this type of information to you?

5 A No, this was one of the deals done.

6 Q One of what? I'm sorry.

7 A One of many deals done by GCAC.

8 Q And just your -- in your email at the top, once again,
9 what is it that you were communicating to Mr. Perugini?

10 A I am giving him the hedge prices. So here I purchased
11 28 lots of November Brent at 55.55, which is the hedge
12 against this fixed price sale to GCAC.

13 Q And why did you communicate that information to Mr.
14 Perugini?

15 A Because all deals that were done were to be hedged.

16 Q And why did he need to know?

17 MS. GOOTT: (indiscernible).

18 THE COURT: Sustained.

19 BY MR. COOLEY:

20 Q Were you ever asked to provide such information to Mr.
21 Perugini?

22 A Yes. It was --

23 MS. GOOTT: (indiscernible).

24 THE COURT: Sustained.

25 BY MR. COOLEY:

1 Q By whom were you asked?

2 MS. GOOTT: (indiscernible).

3 THE COURT: Overruled.

4 BY MR. COOLEY:

5 A The hedging specifics were to be --

6 MS. GOOTT: (indiscernible).

7 THE COURT: Sustained.

8 BY MR. COOLEY:

9 Q By whom were you asked to communicate this type of
10 information to Mr. Perugini?

11 A By Mr. Brass.

12 MR. COOLEY: Could I have Vitol Exhibit 19,
13 please? And again, if I could have both pages. This is
14 another two-page document.

15 Mr. Kuo -- that doesn't look right.

16 BY MR. COOLEY:

17 Q Mr. Kuo, I have put on the screen what I have marked as
18 the two-page document, Vitol Exhibit 19. Do you recognize
19 this document?

20 A I do.

21 Q Can you identify it to the Court?

22 A This was an email sent by Patrick Perugini to myself
23 and Mike Ruzic with the members of GCAC and copy in an email
24 from myself.

25 MR. COOLEY: I will move for the admission of

1 Vitol 19. Thank you, Your Honor.

2 (Vitol Exhibit 19 Admitted into Evidence.)

3 THE COURT: Let me ask you, Mr. Cooley -- I'm
4 trying to think of a spot to where we could take a break.
5 And I need to give Ms. Martinez's fingers a break.

6 MR. COOLEY: I probably have...

7 THE COURT: You want to ask questions about this
8 document and then maybe we can break.

9 MR. COOLEY: Yes, Your Honor. That would be just
10 fine.

11 THE COURT: Okay. Why don't we just do that?

12 MR. COOLEY: And, Your Honor, I want to make sure
13 the record was clear. I appreciate Counsel's statement
14 regarding this document. I do move the admission of Exhibit
15 19.

16 THE COURT: No, I heard you. And Vitol -- I did
17 note that Vitol 19 is admitted.

18 MR. COOLEY: Okay.

19 THE COURT: Just for clarification purposes.

20 MR. COOLEY: I just wanted to make sure. Thank
21 you, Your Honor.

22 THE COURT: Yeah, yeah.

23 BY MR. COOLEY:

24 Q I would just direct your attention to the first line of
25 this email, the email from Mr. Perugini.

1 A Yes, I see it.

2 Q Okay. Would you just read it so I know we are oriented
3 in the same place?

4 A Exxon purchase (indiscernible) sale.

5 Q I'm sorry, I'm not sure we're looking at the same
6 thing. The first line of Mr. Perugini's email in about the
7 middle of the page.

8 THE COURT: In my world you can just say deal one,
9 deal two, deal three and we can move this along.

10 MR. COOLEY: Ordinarily I would do that, Your
11 Honor. I think I've drawn objections for doing that. I'm
12 trying to navigate.

13 THE COURT: I feel good about your chances if you
14 just say those two words and get him there.

15 BY MR. COOLEY:

16 Q Mr. Kuo, I will direct your attention to the portion of
17 Mr. Perugini's email beginning with the word -- with the
18 words Deal One. Do you see that?

19 A Yes, I do.

20 Q Deal Number One. Okay. Does that information have
21 meaning to you?

22 A Yes, it does.

23 Q Is this information describing another one of these
24 transactions that you have testified to?

25 MS. GOOTT: (indiscernible).

1 THE COURT: Overruled.

2 BY MR. COOLEY:

3 A Yes, it does.

4 Q And your -- directing your attention to your email
5 above, what are you communicating to -- what are you
6 communicating back in your email?

7 A This is an email back to GCAC with the hedges that were
8 placed on this transaction.

9 Q And just briefly looking back at Mr. Perugini's email,
10 did the transactions -- strike that.

11 MR. COOLEY: Could I have Vitol -- you wanted to
12 stop there, Your Honor. I am done with that exhibit. If
13 the Court would like to stop there, I am fine to stop at
14 that point.

15 THE COURT: That's a good stopping point. Why
16 don't we just break for lunch, come back -- why don't we do
17 1:45 just to -- come back in 45 minutes.

18 Mr. Kuo, I would remind you that you are under
19 oath and you are not to discuss your testimony with anyone.
20 And that includes these lawyers or anyone else. Okay? Do
21 you understand that?

22 THE WITNESS: I do.

23 THE COURT: Okay. Just from a housekeeping
24 standpoint, how much longer do you think you're going to...

25 MR. COOLEY: I am going to take advantage of this

1 opportunity to confer with my colleagues to see what I can
2 do to --

3 THE COURT: Okay.

4 MR. COOLEY: We're going to get in the information
5 we need to, I assure the Court of that. But to the extent
6 we can move it along...

7 THE COURT: Okay. We will come back at 1:45.
8 Thank you.

9 MR. COOLEY: Very good. Thank you.

10 (Recess)

11 CLERK: All rise.

12 THE COURT: Please be seated. Thank you. We are
13 back on the record in Vitol v. Brass. Mr. Kuo, I would
14 remind you that you're still under oath.

15 THE WITNESS: Yes.

16 THE COURT: Okay. We're continuing with the
17 direct examination. Mr. Cooley, you may proceed.

18 MR. COOLEY: Thank you, Your Honor. Ms. Mehta,
19 could I have Vitol Exhibit 22, please? And this is a one-
20 page document, just for the record.

21 BY MR. COOLEY:

22 Q Mr. Kuo, would you take a look at the document on the
23 screen before you that has been marked as Exhibit -- Vitol
24 Exhibit 22 and tell me if you recognize the document?

25 A Yes, I recognize it.

1 Q Can you identify it to the Court?

2 A This was an email originally from Patrick Perugini on
3 October 11, 2017 to myself and A.J. Brass and some other
4 people at GCAC in Rio and --

5 Q Oh, sorry.

6 A -- and a reply from myself back to them, to Patrick.

7 Q And is this -- were you a sender or recipient of each
8 of the emails in this thread?

9 A Yes.

10 Q And do you recall receiving and participating in this
11 email exchange? Your Honor, I move the admission of Exhibit
12 22.

13 THE COURT: Vitol 22 is admitted.

14 (Vitol Exhibit 22 Admitted into Evidence.)

15 MR. COOLEY: And I have just one more of these.
16 If I could have Vitol 23? This is a two-page document. Ms.
17 Mehta, could I get both pages, please?

18 BY MR. COOLEY:

19 Q Mr. Kuo, I've put before you a two-page document marked
20 as Vitol Exhibit 23. Do you recognize this document?

21 A Yes, I do.

22 Q Can you identify it to the Court?

23 A It's (indiscernible) sent from GCAC to myself and Mr.
24 Perugini.

25 MR. COOLEY: Your Honor, I'll move the admission

1 of Vitol Exhibit 23.

2 THE COURT: Vitol Exhibit 23 is admitted.

3 (Vitol Exhibit 23 Admitted into Evidence.)

4 BY MR. COOLEY:

5 Q At the conclusion of all of the transactions that
6 occurred between GCAC and Vitol, was there a balance
7 remaining due from one party to the other?

8 A Yes, there was.

9 Q And what was the amount that was due?

10 THE COURT: Mr. Kuo, just a second. All right.
11 Sounds like, Mr. Kuo, you know the routine. I'm just going
12 to ask you to step out for a moment and let me just address
13 an issue. Please step down and remember not to discuss your
14 testimony with anyone and we'll take something out. Okay.
15 Mr. Patterson, what do you wish to show me?

16 MR. PATTERSON: (indiscernible)

17 THE COURT: Okay. (indiscernible) podium.

18 MR. PATTERSON: Thank you. And again, Your Honor,
19 this is Exhibit Number 39.

20 THE COURT: Are these the same Interrogatories we
21 looked at earlier?

22 MR. PATTERSON: Yes.

23 THE COURT: Okay. Thank you.

24 MR. PATTERSON: And you'll see, starting in
25 Interrogatory 7, we ask, "Please identify what property the

1 Debtor obtained from Vitol", and this response is the form
2 response they use for each question that we ask, that Mr.
3 Brass asks, regarding how much is owed. And you'll see this
4 form answer was cut and pasted several times, each time that
5 the question regarding an amount was asked. They would not
6 or could not identify an amount of money that was obtained,
7 was owed, and let's go back to the beginning. "Please
8 describe, in detail, how much money GCAC obtained from
9 Vitol's alleged in Paragraph 23, similar to the following
10 interrogatory, "Please identify the amount of money that
11 GCAC received from Vitol, the date that the money received
12 and how much and how the money was received, transfer of
13 check, direct deposit, etc." And you'll see, the response
14 was very generic, that they received -- again, they didn't
15 identify, tens of million dollars in credit from Vitol over
16 \$14 million of which remains unpaid and then they object.
17 And now they want to come in and put on this evidence of
18 what's owed and why it was owed and how it was owed. We
19 gave them the opportunity to do that, and they just refused
20 to do it. Simple question. But they can't come in now and
21 do it.

22 THE COURT: Mr. Cooley, what's your response?

23 MR. PATTERSON: How much, when and how? How much,
24 when and how we got the money, and they just refuse to do
25 it. They can't do it now.

1 MR. COOLEY: A couple of things, Your Honor.

2 First, Your Honor, as I look at Interrogatory Number 2,

3 which --

4 THE COURT: Maybe --

5 MR. COOLEY: I'm sorry --

6 THE COURT: I just want to -- going to give it to
7 Mr. Mehta, maybe she can point me to what you're looking at.

8 MR. COOLEY: I think this would be --

9 THE COURT: Or is it -- it's Exhibit 39, right?

10 MR. COOLEY: It is Debtor Exhibit 39.

11 THE COURT: Okay. I just want to pull that up
12 just so I can -- 39 -- okay. Okay. All righty, Number 2.
13 I'm here.

14 MR. COOLEY: So, if I could have the third page,
15 Ms. Mehta. Perfect. The first thing I want to note, Your
16 Honor, is that Interrogatory Number 1 and Interrogatory
17 Number 2 -- Interrogatory Number 1 asks to identify, "All
18 money property services or an extension or removal or
19 refinancing of credit that the Debtor received as alleged in
20 the Complaint." That's a different question, first of all,
21 than the question that I asked the witness, which was, "What
22 was the balance remaining due at the end?," and I'm
23 essentially paraphrasing that. That's point the first, as I
24 would submit it's an entirely different question.

25 Second of all, Your Honor, as I read the response,

1 we answered the question and said, throughout the course of
2 the interim financing arrangement, Vitol provided Debtor
3 with tens of millions of dollars of financing consisting of
4 -- it goes on to list various things of which it consists.
5 Then it goes on to say, "Although the Debtor caused GCAC to
6 make three payments totaling \$16 million and change, over
7 \$14 million remains unpaid." That actually goes to the
8 question that I had actually posed to the witness and there
9 it is right there. It then continues on and refers the
10 Debtor, in particular, to specific, what are described here
11 as Comprehensive Spreadsheets, contemporaneously tracking
12 and aggregating the credit and they are identified by Bates
13 number. If we scroll down to -- if we look at Interrogatory
14 Number 2, same basic issue, "Please describe, in detail, how
15 much money the Debtor obtained from Vitol", and the response
16 goes on and says, "As provided in more detail in response to
17 Interrogatory Number 1, the Debtor, through his alter ego,
18 GCAC, received tens of millions of dollars in credit from
19 Vitol, over \$14 million --", could we have the next page,
20 Ms. Mehta? "-- over \$14 million of which remains unpaid."
21 Which actually goes straight to the specific question I was
22 asking.

23 I would also note for the Court, and again, refers
24 the Debtor to circumstances surrounding it and also
25 identifies specifically by Bates number three spreadsheets

1 described as Comprehensive Spreadsheets contemporaneously
2 tracking and aggregating extensions of credit. Finally, I
3 would note, Your Honor, that in addition to alleging the
4 amount owed in the Complaint, the initial disclosures that
5 were filed by Vitol in this case on or about October 29,
6 2021, specifically say --

7 THE COURT: Why don't you point me there?

8 MR. COOLEY: The initial disclosures, I believe
9 would be Debtor Exhibit 37.

10 THE COURT: Okay. Hold on. Just give me a second
11 to get there. Oh, it's up already.

12 MR. COOLEY: And Ms. Mehta, if I could have, I
13 think it is Page 3. Thank you. Directing the Court to Part
14 3 at the bottom titled "Computation of Damages", we
15 disclosed in the initial disclosures that Vitol seeks to
16 prevent Debtor from discharging at least \$10 million in
17 damages arising from Debtor's conduct. In the State
18 litigation, Vitol asserted damages of at least \$14 million
19 and change arising from Debtor's conduct. Debtor and Vitol
20 entered into an agreed judgment in the State Court
21 litigation for \$10 million as a part of the settlement of
22 Vitol's claim.

23 THE COURT: Okay. I'm satisfied that the
24 Interrogatories were answered sufficiently. The expressed
25 damages of at least \$14.7 million, several locations there

1 are exhibits that are noted. He was asked whether the
2 balance was. If it's consistent with that, I think that's
3 what parties would have been put on notice for. I'm
4 satisfied, so I'm going to overrule the objection, and
5 everybody's rights are reserved.

6 MR. PATTERSON: (indiscernible)

7 THE COURT: Well, I --

8 MR. PATTERSON: (indiscernible)

9 THE COURT: I think the damages are just capped at
10 10, but the fraud claim that's behind it was for at least
11 \$14.7 million, but the cap is at 10 because that's what
12 people agreed to. I think that's the way I read that.
13 That's the way I read Archer.

14 MR. COOLEY: And I'll say, Your Honor, we -- that
15 is correct, Your Honor, the claim that is sought to be
16 discharged -- denied from -- accepted from discharge is in
17 the amount of \$10 million --

18 THE COURT: In other words -- let me just back up
19 for a second.

20 MR. COOLEY: -- but it arises from --

21 THE COURT: Let me say it this way --

22 MR. COOLEY: Yes, Your Honor.

23 THE COURT: There is -- it is impossible in the
24 circumstance in which there was a settlement agreement for
25 \$10 million for the witness to testify that the debt was

1 exactly \$10 million, but that's what it's capped at. The
2 number, it may be larger than that and there may have been a
3 debt owed that was greater than that at the time and that's
4 the fact. The damage is just capped no matter what it is,
5 up to a million bucks. It could be less.

6 MR. COOLEY: That's correct, Your Honor.

7 THE COURT: It could be less, it could be more, --

8 MR. COOLEY: And as to the relevant --

9 THE COURT: -- but you're capped at the 10.

10 MR. COOLEY: That's right Your Honor, and as to
11 the relevancy --

12 THE COURT: But the witness can't testify it -- as
13 to that, at the time.

14 MR. COOLEY: And as to the relevancy, the issue
15 becomes whether or not the present-day debt arose from --

16 THE COURT: That's the way I understand it.

17 MR. PATTERSON: Well, it --

18 THE COURT: In other words, the witness can't
19 testify to 10, right?

20 MR. PATTERSON: (indiscernible)

21 THE COURT: Okay. (indiscernible) at 10. The
22 witness can't testify to 10 because the number is never
23 going to add up to 10.

24 MR. PATTERSON: (indiscernible)

25 THE COURT: You don't have to prove up to 10.

1 MR. PATTERSON: (indiscernible)

2 THE COURT: Here is the basis of the fraud claim,
3 which was in (indiscernible) and capped at 10.

4 MR. PATTERSON: (indiscernible)

5 THE COURT: I'm trying to -- but we haven't gotten
6 there though. Isn't that the point? Don't they get a
7 chance to say that there was a judgment -- that there was an
8 amount of debt that gets claims to the 10 million? Other
9 than that, they can't prove it up.

10 MR. PATTERSON: (indiscernible)

11 THE COURT: I disagree with that. I disagree with
12 that.

13 MR. PATTERSON: (indiscernible)

14 THE COURT: (indiscernible) I agree with you, but
15 they've asserted damages of at least \$14 million
16 (indiscernible), but the question is, did they answer the
17 question? That's the question before me. Did they answer
18 the question in the interrogatories? That was -- the point
19 was made; he can't testify it because they never told us
20 what the number was. That's what I heard.

21 MR. PATTERSON: (indiscernible)

22 THE COURT: No, no, no.

23 MR. PATTERSON: (indiscernible)

24 THE COURT: It should come out the way it comes
25 out.

1 MR. PATTERSON: (indiscernible)

2 THE COURT: Mm hm.

3 MR. PATTERSON: (indiscernible)

4 THE COURT: Mm hm.

5 MR. PATTERSON: (indiscernible)

6 THE COURT: Mm hm.

7 MR. PATTERSON: (indiscernible)

8 THE COURT: Can we go back to the Interrogatories?

9 MR. PATTERSON: (indiscernible)

10 THE COURT: No, no, no. I just want to go back
11 because I'm looking at --

12 MR. COOLEY: The Debtor Exhibit 39.

13 THE COURT: Well, let's look at 2 first. "The
14 Debtor caused GCAC to make three payments with Vitrol
15 totaling \$16.6 million, partial repayment for the financing.
16 Over \$14 million remains unpaid." That's the point.
17 Subject to the foregoing -- and then, I haven't seen the
18 spreadsheets, but there are spreadsheets that people can
19 then cross him on, obviously, that are supposedly showing --
20 tracking the aggregate credits.

21 MR. PATTERSON: (indiscernible)

22 THE COURT: Last sentence.

23 MR. COOLEY: But I think -- is the Court looking
24 at Number 1?

25 THE COURT: Oh, sorry.

1 MR. COOLEY: And --

2 THE COURT: I'm on that last point of 1. I'm
3 sorry. I'm looking at the wrong part of the screen here.

4 MR. COOLEY: And I would also direct the Court's
5 attention to the first sentence of Response Number 1, which
6 specifically references product purchases, hedging services,
7 purchases, deal cost, storage and transportation costs and
8 so forth.

9 MR. PATTERSON: (indiscernible)

10 THE COURT: I think he can -- but he has been
11 testifying that there has been some alleged financing.

12 MR. PATTERSON: (indiscernible)

13 THE COURT: That's arguable. That's their point
14 and I got your point, but that's their point. He's saying
15 that, in the course of these transactions, consisting of
16 hedging services, purchase deal, transportation costs, that
17 there were three payments -- GCAC made three payments to
18 Vitol in partial repayment, but over \$14 million remains
19 unpaid. I don't -- what I did with that information, I
20 don't know. But I do -- if he can prove up that at least --
21 he did say there was \$14 million unpaid, so at least justify
22 how we even get close to 10. But the answer can't be based
23 on the settlement. They better be able to prove a fraud on
24 their own, but they're capped at the number.

25 MR. PATTERSON: (indiscernible)

1 THE COURT: They have to get to a number. That's
2 factual, and then cap themselves at 10.

3 MR. PATTERSON: (indiscernible)

4 THE COURT: Overruled. Thank you. Why don't we
5 bring Mr. Kuo in. Everybody's right to reserve. I'm just
6 telling you, I think you can ask him the question. Mr. Kuo,
7 I'd remind you that you're under oath. Mr. Cooley, you may
8 proceed.

9 MR. COOLEY: Yes, Your Honor.

10 BY MR. COOLEY:

11 Q At the end of -- at the conclusion of all of the
12 transactions between Vitol and GCAC, what was the balance
13 that remained owed?

14 MS. GOOTT: Objection.

15 THE COURT: Overruled. Overruled.

16 BY MR. COOLEY:

17 A It was approximately \$15 million.

18 Q And how do you know that?

19 A We did a long, exhaustive reconciliation of the deals
20 and that was the number. That was the final number.

21 Q When you say, "we," who did the reconciliation?

22 A It was done by Mike Ruzic.

23 Q And who is that?

24 A Mike Ruzic is an employee that's -- he was originally
25 an operator, meaning that he took care of the physical

1 operations of cargos and barges and he worked for Vitol or
2 still works for Vitol, 15-20 plus, 20 years. So, he is
3 assigned to do special projects and really understands the
4 accounting and ins and outs of physical transactions.

5 Q Why was he assigned that task?

6 A I think --

7 MS. GOOTT: Objection.

8 THE COURT: Sustained.

9 BY MR. COOLEY:

10 Q Who assigned that task to him?

11 A I'm not certain the answer to that.

12 Q Okay. Do you know -- okay, do you know if he, in fact,
13 prepared such a reconciliation?

14 A Yes, he's the one who prepared it.

15 Q Would you recognize that reconciliation if you saw it?

16 A Yes, I would.

17 Q Could I have Vitol Exhibit 54? And I'm just going to
18 make sure -- I've put on the screen what is a one-page
19 document which has been marked Vitol Exhibit 54. Do you
20 recognize this document?

21 A Yes, I do.

22 Q Can you describe it to the Court?

23 A It was an email initially sent by Mike Ruzic to myself
24 and Tom Moran in which -- and then the other email
25 subsequently I forwarded this to Mr. Brass.

1 Q And were you either the sender or recipient of each of
2 the emails on this document?

3 A Yes.

4 Q And does it appear to be a true and correct copy of the
5 document you recall?

6 A Yes.

7 Q I move the admission of Exhibit 54.

8 THE COURT: Any objection?

9 MS. GOOTT: Yes (indiscernible)

10 THE COURT: Counsel?

11 MR. COOLEY: Your Honor, certainly not double
12 hearsay because the witness has authenticated the rest of
13 the document. However, I believe that in -- a statement is
14 not necessarily hearsay if it has been adopted by a
15 declarant available for cross-examination.

16 THE COURT: Yeah, he's not the declarant in the
17 email, though.

18 MR. COOLEY: That's right, Your Honor. But the
19 question would be if it has been adopted.

20 THE COURT: You can offer it for --

21 MR. COOLEY: Your Honor, I'll offer the document
22 for the fact of its being said if that -- in other words,
23 not for the truth of the matter asserted, but for the fact
24 of its existence, essentially.

25 MS. GOOTT: Then, I'm going to (indiscernible)

1 THE COURT: I'll overrule that. That's relevant
2 here. It's the reconciliation that he was describing that
3 he understood.

4 MS. GOOTT: But my objection (indiscernible).

5 THE COURT: No, you just said it was irrelevance.
6 He's not -- he said he wasn't offering it for the truth of
7 the matter asserted, he was offering it for the purpose that
8 there was an email sent to -- from Mike to Eric. That's my
9 understanding, Ms. Goott. But Mr. Cooley, you correct me if
10 I'm wrong about that.

11 MR. COOLEY: No, that's correct, Your Honor.

12 THE COURT: And then I thought you followed up
13 with, relevance on that. And then you're going back to
14 hearsay, so I just --

15 MS. GOOTT: (indiscernible)

16 THE COURT: Oh no. I'm accepting this as an email
17 from Mike to Mr. Kuo.

18 MS. GOOTT: (indiscernible)

19 THE COURT: Because that's what it says.

20 MS. GOOTT: (indiscernible)

21 THE COURT: He -- let me just say this, counsel
22 said he wasn't offering it for the truth of the matter
23 asserted, so that's what I've got to take it as. That's my
24 -- Mr. Kuo, you correct me if I'm wrong.

25 THE WITNESS: No, that is correct, Your Honor.

1 THE COURT: Okay. So, then I can't read it for
2 anything more than that.

3 MS. GOOTT: (indiscernible) information
4 (indiscernible) only offering (indiscernible)

5 MR. COOLEY: Respectfully, I disagree, Your Honor.
6 A statement made could have significance --

7 THE COURT: Wait, wait, Ms. Goott, is your
8 objection to hearsay if he --

9 MS. GOOTT: (indiscernible)

10 THE COURT: Right. What I'm saying is, I think we
11 then have to get there and then deal with that. If he's
12 asking that it meant 54 or if it says what it says, the
13 question is, then you can, I think from there, you can -- I
14 think you still have your rights to argue hearsay.

15 MS. GOOTT: (indiscernible)

16 THE COURT: The question is, do you object to its
17 admission for it being an email from Mike to Eric?

18 MS. GOOTT: (indiscernible)

19 THE COURT: The question is yes or no, Ms. Goott.
20 Do you know?

21 MS. GOOTT: (indiscernible)

22 THE COURT: On what basis?

23 MS. GOOTT: (indiscernible)

24 THE COURT: All right. It's overruled. I'm going
25 to -- overruled. I'm going to admit it for the purpose that

1 it's an email and it says what it says. I'm not entering --
2 I'm not -- it's not admitted for the truth of the matter
3 asserted. It's admitted as an email that says what it says.

4 (Vitol Exhibit 54 Admitted into Evidence.)

5 BY MR. COOLEY:

6 Q Do you know why this email was sent to you?

7 A Yes.

8 Q Why was this email sent to you?

9 MS. GOOTT: Objection. Calls for (indiscernible)

10 THE COURT: If he knows. You can answer if you
11 know.

12 MS. GOOTT: (indiscernible)

13 THE COURT: Overruled. You can answer.

14 BY MR. COOLEY:

15 A Yes, this email was sent to me to show me what the
16 outstanding debt was from GCAC to Vitol.

17 Q And why did you forward this information on to Mr.
18 Brass?

19 A I forwarded it to Mr. Brass so that he could verify,
20 check and go through our reconciliation to make sure that he
21 agreed with our numbers.

22 Q And whether or not Mr. Ruzic did his homework
23 correctly, what was the total that Mr. Ruzic calculated in
24 his reconciliation?

25 MS. GOOTT: Objection (indiscernible)

1 THE COURT: Sustained. Quit while you're ahead,
2 Mr. Cooley.

3 MR. COOLEY: Could we take down Exhibit 54,
4 please?

5 BY MR. COOLEY:

6 Q Do you know what the elements of the reconciliation
7 were that Mr. Ruzic performed?

8 A What do you mean by "the elements"?

9 Q The components of what he tallied?

10 A Yes, I do.

11 Q Can you summarize what you understood those to include?

12 MS. GOOTT: Objection (indiscernible)

13 THE COURT: Overruled. No, no. Understanding the
14 components -- it's not -- it's understanding of what the
15 components were. You could answer the question.

16 BY MR. COOLEY:

17 A So, this was an accumulation of the amounts that were
18 due from the outstanding products that were sold and not
19 received. The funds that were received from GCAC and not
20 remitted back to Vitol. They were for hedging losses. They
21 were for ancillary costs such as tank storage fees, barging,
22 inspection costs and any costs associated with the deal
23 transactions. And also, I think, part of the component was
24 some time value of money calculations. I might have missed
25 one, but that's approximately -- that's the bulk of it.

1 Q Could I have Vitol Exhibit 86 please? I've put up on
2 the screen the first page of what has been marked as Vitol
3 Exhibit 86. And let me just ask you first, do you recognize
4 this document, or would you like me to go through the entire
5 document?

6 A I recognize this document.

7 Q Can you identify it to the Court?

8 A This is a --

9 THE COURT: Hold on. What's going on?

10 BY MR. COOLEY:

11 A This -- I may get my verbiage wrong, but this is a --
12 this is a suit filed by GCAC against Vitol.

13 Q And does this appear to be a true and correct copy of
14 that document?

15 A The first page, yes. (indiscernible) any other pages.

16 Q Were you at all involved in the preparation of this
17 document or the information that went into it?

18 MS. GOOTT: (indiscernible)

19 MR. COOLEY: No, I'm establishing -- I'm trying to
20 establish a foundation for the witness' familiarity with it.

21 THE COURT: I'll sustain. You can ask in a
22 different way.

23 BY MR. COOLEY:

24 Q Were you involved, at all, in the preparation of this
25 document?

1 A I'd have to see the rest of the document. I don't
2 recall everything in this document.

3 MR. COOLEY: Could we have -- Ms. Mehta, could we
4 have Exhibit -- Page -- pdf Page 12 of this document?

5 THE COURT: I'll overrule the objection.

6 MR. COOLEY: Let's just so we can be precise on
7 the record, Ms. Mehta, could I have Page 1 again? Would you
8 please --

9 THE COURT: I'm not going to let you do that.
10 Just go ask another question.

11 MR. COOLEY: Page 12 then, please.

12 BY MR. COOLEY:

13 Q Do you recognize this particular page of the document?

14 MS. GOOTT: (indiscernible)

15 THE COURT: Overruled.

16 BY MR. COOLEY:

17 A Yes, I recognize this.

18 THE COURT: That was the question.

19 BY MR. COOLEY:

20 Q Can you -- can you identify what this page is to the
21 Court?

22 A This is a Statement of Verification by myself.

23 Q And is that your signature?

24 A Yes, it is.

25 Q Is Exhibit 12 a -- does Exhibit 12 appear to be a true

1 and correct copy of the document as you recall it?

2 MS. GOOTT: Objection (indiscernible)

3 MR. COOLEY: I'm sorry. Your Honor, I apologize.

4 I did. I did refer to the wrong -- I was thinking I had the
5 page number in my head. I apologize.

6 BY MR. COOLEY:

7 Q Does this appear to be a true and correct copy of what
8 you understand Vitol Exhibit 86 to be?

9 A I don't know if it's Exhibit 86. Maybe that's what it
10 was at the beginning, but I do recognize this Statement
11 here, but I don't know if it was Exhibit 86.

12 Q If we could just have the first page of the document
13 back, please.

14 A Yes, I agree.

15 MR. COOLEY: Your Honor, I move the admission of
16 Vitol Exhibit 86.

17 THE COURT: Any objection?

18 MS. GOOTT: (indiscernible)

19 THE COURT: I'm trying to understand -- I guess
20 that's a --

21 MR. COOLEY: We're offering it as a certified copy
22 in the upper right corner of a Court filing. I'm not
23 seeking to approve the allegations in it.

24 MR. PATTERSON: (indiscernible) prove it up, just
25 get the lawyer on this thing.

1 MR. COOLEY: Your Honor, this was not being
2 offered to prove the allegations made in the Complaint.

3 THE COURT: For what purposes are you offering it
4 then, counsel?

5 MR. COOLEY: Showing -- again, Your Honor, we
6 believe that this is relevant to connecting the dots between
7 the history between the parties and the claim that is the
8 subject of the dispute before this Court.

9 THE COURT: Yeah. What about 9024?

10 MS. GOOTT: (indiscernible)

11 THE COURT: Mm hm.

12 MS. GOOTT: (indiscernible)

13 THE COURT: I'm asking about 9024.

14 MS. GOOTT: (indiscernible)

15 THE COURT: Can you tell me where the word "real
16 property" is located in 9024?

17 MS. GOOTT: (indiscernible)

18 THE COURT: I think that's fair.

19 MS. GOOTT: No, I'm not -- I'm just saying, I
20 don't -- the question that -- I think 9024 comes into
21 effect. I don't think it applies to real estate, but the
22 question is, for what purpose are you offering it, counsel?

23 MR. COOLEY: Yes, Your Honor.

24 THE COURT: In other words, for what purpose are
25 you offering -- you're offering that there's a public Court

1 record that was filed that Mr. Kuo certified that says what
2 it says or are you offering -- because as you're supposed to
3 know, the counterclaim and third parties seek, you know,
4 under Texas Rules of Civil Procedure, like, that's the --

5 MR. COOLEY: Yes, Your Honor --

6 THE COURT: That's the fine distinction that we're
7 getting into, and I think that's where Ms. Goott is going.

8 MR. COOLEY: And I can speak to the Court's --

9 THE COURT: And I want to make sure that we're all
10 just clear as to what you're -- for what purpose you're
11 offering it and other records -- I got it.

12 MR. COOLEY: And I can speak to the Court's
13 question. I believe that -- first of all, I believe 9024
14 does apply. 902, I would note, goes to the question of
15 whether or not the document is authentic as opposed to the
16 hearsay question. The hearsay question is separate and so,
17 I do believe 9024 applies to it. Ms. Mehta, could we have
18 Page 14? And with respect to the hearsay question, Your
19 Honor, I am offering the document for the fact of its
20 existence --

21 THE COURT: I'm just saying they're different
22 questions. They're different questions and I agree with
23 you.

24 MR. COOLEY: Yes.

25 THE COURT: But what I'm saying is, it's a self-

1 authentic -- I believe it's a self-authenticating document.

2 The question is, for what purpose are you now offering it?

3 And I think that's the heart of where Ms. Goott is going.

4 MR. COOLEY: Or the fact of its existence and the

5 existence of the claims that were asserted. Just that

6 allegations were made and what those allegations were. I'm

7 not trying to offer it to prove an allegation made in a

8 lawsuit that was filed somewhere else. I am offering it to

9 show that the pleading was filed, making the allegations and

10 asserting the claims that it contains, including fraud,

11 which is the relevance.

12 MR. PATTERSON: (indiscernible)

13 THE COURT: No, no, no. But hold on. I think you

14 need a better explanation because I got confused as to for

15 what purpose it was being offered so --

16 MR. PATTERSON: The authentication for the

17 disability other than it's the first step. The first step

18 only, we believe (indiscernible)

19 THE COURT: No, no, no. What I'm saying is, Mr.

20 Patterson, I -- all I was trying to do was break them into

21 two parts. Authentication is one issue, 9024, I think kicks

22 in. Then, I think you're entitled to a -- I didn't

23 understand for what purpose you were offering it. I think

24 you need -- I think if we all -- I think we've got to figure

25 out -- Ms. Goott is going to the hearsay part. I was trying

1 to break it into two parts. I probably didn't do a good job
2 of doing that, Ms. Goott, on my part, in terms of, kind of,
3 knowing where I was going. I think the document can be
4 authenticated. The question is, for what purpose is it
5 being now offered. You're saying, if it's being offered for
6 the truth of the matter asserted within the statements
7 within there, then that's hearsay. I got your point.

8 MS. GOOTT: Yes.

9 THE COURT: I did a very bad job of breaking it
10 out and it looked like we were talking against each other
11 when, I think, I was in agreement with you. I was just
12 trying to take it step by step.

13 MS. GOOTT: I apologize.

14 THE COURT: No, no, no. That's on me.

15 MS. GOOTT: (indiscernible)

16 THE COURT: That's on me.

17 MS. GOOTT: (indiscernible)

18 THE COURT: No, no, no. That's on me.

19 MS. GOOTT: (indiscernible)

20 THE COURT: So, for what purpose are you offering
21 it, Mr. Cooley? Because I heard a couple of reasons and I
22 just want to make sure that we're all clear as to which one
23 it is.

24 MR. COOLEY: Yes, Your Honor. And it's being
25 offered -- as I said, it's being -- I probably said it

1 inartfully, so I'm going to try it again. The document is
2 being offered to demonstrate, to prove that in a Court
3 filing, Vitol made certain claims against GCAC, including a
4 claim for fraud, which is a fundamental question before this
5 Court.

6 THE COURT: No, no. I don't want you to go there.

7 MR. COOLEY: Okay.

8 THE COURT: I'm willing to admit it as a document
9 that was filed on the docket and not for the truth of the
10 matter asserted (indiscernible).

11 MR. COOLEY: Should I proceed, Your Honor?

12 THE COURT: No, I guess -- I need to just, kind
13 of, hone down on a couple of things and then I want Mr.
14 Patterson and Ms. Goott to weigh in. Are you offering it to
15 say Kuo worked on a pleading -- attached the certification
16 to a pleading that alleged fraud, and not necessarily that
17 the fraud allegation itself is true? Or just -- or are you
18 trying to then make the additional point that you believe
19 that the fraud claim asserted within there, you want me to
20 take, essentially, for the truth of the matter asserted that
21 there is a valid fraud claim asserted therein?

22 MR. COOLEY: I understand the Court's question. I
23 am not offering it to prove the validity of the claim
24 asserted in this document. I am offering it to prove that
25 the claim was made.

1 THE COURT: Ms. Goott, what's your response to
2 that? I just wanted to bear down so at least I understood
3 what was being asked so that you could file a response --
4 you could respond to it.

5 MS. GOOTT: (indiscernible)

6 THE COURT: If (indiscernible) Mr. Cooley, this
7 document came in for a limited purpose that he would say, he
8 should move on to another document. Mr. Cooley, how do you
9 want to play now? I'll let you try if you want, but I'm not
10 going to let the witness read about claims or license and
11 litigation, which -- he can -- I'm not sure what he's
12 certifying to, and I think I would need to let Ms. Goott and
13 Mr. Patterson in (indiscernible) as to what he actually
14 knows what's in this document and what he thinks that
15 document means, and I'm not sure.

16 MR. COOLEY: I was not planning to do that, Your
17 Honor.

18 THE COURT: But if you do, that would be the
19 route. In other words, if they're going to -- if you're
20 going to want to ask questions about the document, then I
21 think I'm going to have to let them understand the nature of
22 the certification. So, if it's just to say that there was a
23 cross-Complaint filed or a document that was filed that's on
24 this day and at that time, then I'm okay admitting it for
25 that purpose. But if you want to ask questions about what's

1 in the doc, then I'll let them get up and ask questions to
2 understand what Mr. Kuo really understands about the doc.

3 MR. COOLEY: Very well. I will attempt to move
4 on.

5 THE COURT: Okay.

6 MR. COOLEY: But just so I have the record clear
7 on that limited basis, do I understand that Vitol 86 is
8 admitted?

9 THE COURT: Ms. Goott, are you okay with that?

10 MS. GOOTT: (indiscernible)

11 THE COURT: Mm hm. Limited to that purpose and
12 I'm not going to add to it. Just that's -- Ms. Martinez,
13 just say it was admitted for the reasons stated on the
14 record. Okay. Where do we go next?

15 MR. COOLEY: Mr. --

16 THE COURT: Oh, wait. What was the number of the
17 exhibit? I think -- it's nice to know that.

18 MR. COOLEY: Vitol 86.

19 THE COURT: Vitol 86. Okay. Okay.

20 (Vitol Exhibit 86 Admitted into Evidence.)

21 BY MR. COOLEY:

22 Q Do you know what the ultimate outcome in that lawsuit
23 was?

24 A I don't know for certain.

25 Q Do you know if there was a trial?

1 A I don't believe so.

2 Q Do you know if it was settled?

3 MS. GOOTT: Objection.

4 THE COURT: Sustained.

5 BY MR. COOLEY:

6 Q (indiscernible)

7 MS. GOOTT: Objection.

8 THE COURT: Sustained.

9 MR. COOLEY: Your Honor, could I have just a
10 moment to confer with my counsel?

11 THE COURT: Yes. Yup, and in the interim, Ms.
12 Goott, I again -- I want to apologize. I was trying to make
13 the point that we were probably talking about the same
14 thing. I just wanted to look at it in two different ways
15 and I did a very terrible job on that. So, I'm sorry.

16 MS. GOOTT: No, I'm sorry.

17 THE COURT: No, I am.

18 MS. GOOTT: I misunderstood you and --

19 THE COURT: No, well you had to misunderstand me
20 because I was not speaking clearly, so I apologize.

21 MR. COOLEY: Your Honor, I don't want to waste the
22 Court's time. I think I am within, literally, a handful of
23 questions of being done. Could I ask the Court for just
24 five minutes to confer with my co-counsel to confirm?

25 THE COURT: Absolutely. I'll come back in -- it's

1 2:36. I'll come back in five minutes.

2 MR. COOLEY: Thank you, Your Honor.

3 CLERK: All rise.

4 (Recess)

5 THE COURT: So I want everybody to be really clear
6 about this. With respect to the pleading that just went in,
7 it essentially functions as judicial notice. That's the way
8 I view the world. And if anybody -- everybody's rights are
9 reserved.

10 But in terms of the pleading that went in, the
11 admission with all the reservations is essentially judicial
12 notice. I can take notice that it was -- it's in the --
13 it's in the record as evidence. But it's a document that
14 says what it says.

15 But the documents -- but the statements contained
16 therein, I am not taking them for the truth of the matter
17 asserted. And if that's the case, then I think you've got
18 another witness -- that's the way -- if one is to think
19 about the way I'm going to view it, it's essentially the
20 same.

21 MR. COOLEY: Your Honor, that is literally what I
22 was going to come back and suggest to the Court.

23 THE COURT: Okay. So it's the functional
24 equivalent in my mind. But I wanted to clean up the record
25 because it was being admitted with a bunch of caveats, which

1 were correct to do so. But I wanted to make sure everybody
2 was kind of clear about the way I was thinking about it in
3 terms of how I will be viewing the doc, okay?

4 Mr. Kuo, it has nothing to do with you. You've
5 got a couple more questions and then some more.

6 THE WITNESS: Okay. Thank you.

7 MR. COOLEY: I thank the Court for the recess. I
8 pass the witness.

9 THE COURT: Okay. Okay.

10 MR. AURZADA: Your Honor, while Mr. Patterson is
11 setting up, from a planning perspective, do you know how
12 late we'll work tonight. And the reason I say that is that
13 Mr. Kuo has an engagement, as I understand it, at 6:30.
14 We'll need to leave by 6:00.

15 THE COURT: Yeah. I can't tell you.

16 MR. AURZADA: Okay.

17 THE COURT: I said earlier we were going to stop
18 somewhere around 6:00, 6:15, around that area. So it'll be
19 there. So Mr. Kuo, you may be a few minutes late. But what
20 I don't want to do is have a hard stop where Mr. Patterson
21 maybe needed a few more minutes. I want to give him the
22 flexibility to find a decent stop. Maybe he's done, maybe
23 he's not. But I want to give him the flexibility that we
24 can find an appropriate stopping point somewhere in the
25 6:00-ish range. I'm not going to be able to do tomorrow.

1 Okay. Yeah.

2 CROSS-EXAMINATION OF ERIC KUO

3 BY MR. PATTERSON:

4 Q Good evening, Mr. Kuo. Did I say that right? I don't
5 want to mispronounce your name.

6 A That's right.

7 Q Kuo?

8 A Yes.

9 Q Okay. How long have you been with Vitol?

10 A Almost 12 years now.

11 Q Almost how long?

12 A Twelve years.

13 Q Twelve years. And where were you before then?

14 A I worked at a company called Atlantic Trading.

15 Q You have to speak up for me. I apologize.

16 A Sorry. I worked for a company called Atlantic Trading.

17 Q Atlantic Trading? And when you started at Vitol, what
18 did you -- what were you doing for them?

19 A I was hired as a fuel oil trader.

20 Q All right, and I think you said now that you're head
21 broker there at Vitol.

22 A No. I didn't say that.

23 Q You're not a broker at Vitol?

24 A I'm a trader.

25 Q A trader. And so what's the difference? Just your

1 industry has specific language, as does ours, and I want to
2 make sure we're saying the same thing. So what is the
3 difference, broker to trader?

4 A A trader acts as principal, meaning that they will take
5 positions.

6 Q Right.

7 A A broker is someone who matches up a buyer and a
8 seller.

9 Q A broker -- in essence, a broker executes trades for
10 other people?

11 A Yes.

12 Q All right, and a trader actually goes in and takes a
13 position.

14 A That's correct.

15 Q You take a position on behalf of Vitol.

16 A Most of the time, yes.

17 Q Right, and do you provide broker services at Vitol at
18 all?

19 A Generally no.

20 Q All right. So I apologize. You're a head trader at
21 Vitol. You don't have brokers at Vitol, right?

22 A We do not.

23 Q All right. So you're the head trader. How long have
24 you been the head trader at Vitol?

25 A Since I've been there.

1 Q Oh, that's the only thing you've done at Vitol is head
2 trader?

3 A I've been a trader since the day I started there.

4 Q And you've been head trader?

5 A We don't -- we don't have monikers like head and --

6 Q Oh, I apologize. I thought that you were referred to
7 earlier by your lawyer over here as head trader. There is
8 no such thing at Vitol?

9 A We generally do not have titles like head trader.

10 Q Okay. I understand generally. I'm asking you
11 specifically --

12 A We do not.

13 Q -- with respect to you. I think you were referred to
14 as head trader. Is that just incorrect?

15 A Yes. That's incorrect.

16 Q All right. So you don't -- you, nor any other trader
17 there, carries any kind of moniker or title on the floor,
18 right?

19 A No.

20 Q Is that correct? I'm sorry. Is that a correct
21 statement --

22 A Yes.

23 Q -- that no trader carries any kind of title or moniker?

24 A I don't know everybody's title. But I think so.

25 Q All right. So you're a trader, not a broker. You

1 don't do trades for other people, right? Do you have to
2 have a different license to do that?

3 MR. COOLEY: Objection, compound.

4 THE COURT: Overruled.

5 THE WITNESS: Do I have to have a license for?

6 BY MR. PATTERSON:

7 Q A different license to trade for third parties.

8 A I don't know.

9 Q You don't?

10 A I do not.

11 Q What licenses do you hold as a trader?

12 A I don't hold any licenses.

13 Q You have no license?

14 A I do not.

15 Q So you're not aware that in order for me to call you,
16 for you to trade for me, you may need, say, a Series 7
17 license?

18 A For equities, yes, I believe so.

19 Q Right. How about commodities?

20 A I don't have a license, no.

21 Q No. My question is what do you need to trade on my
22 behalf in commodities.

23 A I think it's a Series 3.

24 Q A Series 3, and a Series 7 for equities, right?

25 A I think so, yes.

1 Q So to be a broker and to trade on others' behalf, you
2 have to pass and be certified or get a license from the
3 regulatory agencies, right?

4 MR. COOLEY: Objection, vague. Counsel used the
5 word broker.

6 MR. PATTERSON: I think he understood what I
7 meant. That's what we're talking about, being a broker.

8 THE COURT: Yeah. I think the questions were
9 about being a broker.

10 MR. PATTERSON: Right.

11 THE COURT: That's --

12 MR. PATTERSON: you need a license to be a broker.

13 THE COURT: That's -- yeah, I'll overrule.

14 MR. COOLEY: In that case, foundation. The
15 witness has testified that the witness is a trader, not a
16 broker.

17 THE COURT: What's your -- what's your response to
18 that, Mr. Patterson?

19 MR. PATTERSON: Well, my response is that is
20 correct. Unfortunately it wasn't my question. It doesn't
21 have anything to do with my question. My question, he
22 testified as to his knowledge of what was necessary --

23 THE COURT: To be a trader, to be a broker.

24 MR. PATTERSON: To be a broker for third parties.
25 I was following up on the second part of that question with

1 respect to --

2 THE COURT: Okay.

3 MR. PATTERSON: -- trading commodities for third
4 parties.

5 THE COURT: I'll give him a little leeway. We'll
6 see where this goes.

7 MR. PATTERSON: Thank you, Your Honor.

8 BY MR. PATTERSON:

9 Q So you need a Series 3. You would have to be licensed
10 from the regulatory agency to trade for a third party,
11 correct?

12 A I don't know.

13 Q Well, you just said you thought you needed a Series 3
14 to be a broker in commodities.

15 A I've never taken a Series 3. I don't know anything
16 about Series 3s.

17 Q No. I understand. But earlier you testified that you
18 thought you need a Series 3 --

19 A I thought.

20 Q -- to trade brokers --

21 A I thought.

22 Q Right. We're just talking about what you know, what
23 you think, what you understand, right? That's all we can
24 talk about today. I'm not trying to trick you or pin you
25 down. I just want to make sure I understand, right, because

1 I'm talking about your industry now. So that's all. So
2 your understanding is you need a Series 3 to trade for other
3 people in commodities.

4 MR. COOLEY: Objection, mischaracterizes. The
5 question have been about broker.

6 THE COURT: Yeah. That's -- I'll sustain that
7 objection.

8 BY MR. PATTERSON:

9 Q What does a broker do? Let's go back to the basics
10 since we're drawing objections. Brokers -- the difference
11 between brokers and traders? Go ahead.

12 MR. COOLEY: Objection, asked and answered.

13 THE COURT: Yeah. Mr. --

14 MR. PATTERSON: Okay.

15 THE COURT: -- Patterson, I just think it was a
16 timing question. I think the witness's testimony was that
17 he believed a broker required a Series 3, and I think your
18 question was so a trader needs a Series 3.

19 MR. PATTERSON: No, a broker. Just -- no, to
20 trade --

21 THE COURT: That's what your question said.
22 That's all I mean.

23 MR. PATTERSON: -- for a third party. Okay.

24 BY MR. PATTERSON:

25 Q To make a trade for a third party, you would need

1 whatever a broker is required to have, a Series 3 or a
2 Series 7, right? You would agree with me?

3 A I don't -- I don't know.

4 MR. COOLEY: Objection, vague.

5 THE COURT: Okay.

6 MR. COOLEY: Your Honor, the whole point is the
7 capacity in which it's happening.

8 THE COURT: Overruled. He can answer if he knows.

9 THE WITNESS: I don't know what a Series 3
10 specifically entails.

11 BY MR. PATTERSON:

12 Q Right. To your understanding or your belief, do you
13 have the ability to execute a trade on my behalf as you sit
14 here today in commodities?

15 A Possibly.

16 Q All right. Explain.

17 A Well, first, if you were a counterpart that we
18 approved, then we could execute a trade for you.

19 Q A counterparty as if I'm buying or selling myself,
20 right?

21 A Well, if you were in the business and we've done our
22 KYC process for you --

23 Q Right.

24 A -- then we potentially could buy on your behalf.

25 Q Okay. I am a retail customer. Mr. Kuo, I need a

1 forward contract on a hundred barrels of oil. Can you
2 execute this for me?

3 MR. COOLEY: Objection, vague, retail customer.

4 THE COURT: Overruled.

5 THE WITNESS: As a retail customer, I do not
6 believe so. but I do not -- I do not invent these
7 processes. That's --

8 BY MR. PATTERSON:

9 Q Right. You don't think so, and it's not what you do
10 anyways, right?

11 A It is not.

12 Q All right. And so, okay, we'll come back to that. You
13 are an acquaintance of Mr. Brass; is that correct?

14 A Currently or in the past?

15 Q In the past.

16 A Yes.

17 Q How did you meet Mr. Brass?

18 A He's a person in the oil community, and we meet persons
19 in the oil community at various events or -- I know a lot of
20 people in the oil business.

21 Q You know a lot of people in the asphalt business?

22 A A few.

23 Q That takes me to a side track. We talked about trading
24 asphalt or asphalt components. How many traders at Vitol
25 trade asphalt or asphalt components that you're aware of?

1 A Today?

2 Q Yeah. Sure. Let's start with today.

3 A I think there is one person that does.

4 Q Who's that?

5 A It's a guy named Daniel Halls.

6 Q All right, and in 2016-2017, how many traders did Vitol
7 have that traded asphalt or asphalt components?

8 A Which part of the world are we talking about?

9 Q Which part of the physical world geographically?

10 A Geographically.

11 Q North America.

12 A None that I knew of.

13 Q None. And what piece of the asphalt world did you
14 trade in 2016 and 2017?

15 A As I described earlier, there are pieces of or
16 components of the asphalt business which overlap with the
17 fuel oil business --

18 Q Right.

19 A -- which is what I trade. So there are -- at times
20 there was overlap between the two commodities.

21 Q I understand. And so of asphalt or asphalt components
22 in 2016 and 2017, were there any traders at Vitol?

23 A I'm sorry. Were there any traders at Vitol that?

24 Q Traded in asphalt or asphalt components.

25 A That would be me.

1 Q All right. You were it?

2 A Well, there's another trader who -- another fuel oil
3 trader who trades in another region.

4 Q Another region other than the Americas, right?

5 A Well, he trades in the Caribbean.

6 Q Right. All right. So it was you. And you had
7 necessarily just run into Mr. Brass I guess just being in
8 that world, right, that asphalt world or did you know him
9 outside of business? Like was he your neighbor, for
10 example? Is that --

11 A No. He was not my neighbor. I did not know him
12 outside of a -- I did not meet him outside of a business
13 function.

14 Q It was some form of business function, trade show,
15 right?

16 A I don't remember exactly the first time I met him, but
17 most likely.

18 Q It was business-related. It wasn't social.

19 A I mean, I have seen him in a social environment. But
20 I've not -- I don't know when I met him, if you're asking me
21 that.

22 Q Okay, and you said in your earlier testimony that in
23 November, November 2016, remember you looked at the email
24 about the joint venture talk dated back in November of 2016?
25 Do you remember that?

1 A I do.

2 Q And I believe your testimony was in 2016, Vitol did not
3 have a presence in asphalt, right?

4 A Specifically in asphalt, no. We did not.

5 Q Right, and you're careful there now. You said
6 specifically in asphalt. Let me in on what you're thinking
7 there.

8 MR. COOLEY: Objection, sidebar.

9 THE COURT: Sustained.

10 BY MR. PATTERSON:

11 Q Why are you so specific now as to asphalt? Why clarify
12 it for me?

13 MR. COOLEY: Objection, mischaracterizes
14 testimony.

15 THE COURT: Overruled.

16 THE WITNESS: I'm sorry. Can you repeat the
17 question?

18 BY MR. PATTERSON:

19 Q Sure. When I asked you this time about your earlier
20 testimony, where you said Vitol did not have a presence in
21 asphalt in November of 2016, when I asked you about it, you
22 were very careful to say specifically asphalt. Why did you
23 say that?

24 A Because we did not engage in the buying and selling of
25 asphalt, finished grade asphalt.

1 Q And you said specifically asphalt because you did
2 trade, I guess, in the components, right?

3 A Well, as I mentioned to you earlier, there are
4 components that can swing from one product to the other --

5 Q Right.

6 A -- based on relative price.

7 Q Right. So while you did maybe trade -- Vitol did have
8 a presence in the components. Your testimony is Vitol did
9 not have a presence in finished asphalt in November of 2016,
10 right?

11 A Yes. That's correct. We did not.

12 Q All right, and you're aware of the VALT relationship
13 with Vitol, right?

14 A Well, VALT is a subsidiary of Vitol.

15 Q Right. Right. And so when you say VALT did not have -
16 - when you say Vitol did not have a presence, does that
17 include VALT or are you specifically excluding VALT when you
18 say Vitol?

19 A Yes. To clarify, I meant Vitol, Inc., which is the
20 North American entity of Vitol. That's why I asked you
21 earlier --

22 Q Oh, okay.

23 A -- specifically geography, geographically where you
24 were talking about.

25 Q So when you said Vitol did not have a presence in

1 asphalt in November 2016, you were excluding VALT and any
2 other entity other than Vitol, Inc., right?

3 A Can I clarify?

4 Q Of course.

5 A Vitol, Inc. did not have a presence in asphalt. Vitol
6 as a whole company, as the parent company Vitol, we did have
7 a presence in asphalt through VALT.

8 Q Right, and you knew -- you knew that, right?

9 A Yes, I did.

10 Q All right. So at the time, in November of 2016, you
11 knew for a fact that Vitol as an entity, a worldwide entity,
12 had interest in asphalt, right?

13 MR. COOLEY: Objection, mischaracterizes the
14 testimony.

15 MR. PATTERSON: It's a question. I didn't
16 characterize anything.

17 THE COURT: Overruled.

18 THE WITNESS: I'm sorry. Say that one more time.

19 BY MR. PATTERSON:

20 Q So in November 2016, you did know that Vitol as an
21 organization had an interest in the asphalt business, right?

22 A Yes, I did.

23 Q All right, and so your testimony earlier would have
24 been more accurate to say Vitol, Inc. didn't have an
25 interest, right?

1 A That's correct.

2 Q All right. But you did know that VALT existed at that
3 time, November 2016, right?

4 A Yes.

5 Q All right, and so is that where you got the idea of
6 this joint venture with GCAC?

7 MR. COOLEY: Objection, vague.

8 THE COURT: Overruled.

9 THE WITNESS: Can you be more specific, like when
10 you say --

11 BY MR. PATTERSON:

12 Q Your knowledge of the VALT deal, is that where the idea
13 of this joint venture with GCAC came up?

14 MR. COOLEY: Objection, foundation, assumes facts
15 not in evidence.

16 THE COURT: Overruled.

17 THE WITNESS: This venture was initially conceived
18 or brought to light from a colleague of mine, Steve Barth.

19 BY MR. PATTERSON:

20 Q Okay, and Steve is -- what is he at Vitol?

21 A He is a business development guy.

22 Q All right, and so he came to you when?

23 A I don't remember exactly the date. I would say
24 sometime in 2015, I think.

25 Q All right, and generally what was the pitch?

1 A So our business development guys go out and look for
2 new businesses that we can expand into, and so he is tasked
3 with looking at undercover -- like looking under stones and
4 trying to find new businesses that we can engage in.

5 Q Right.

6 A And so he came to me and asked and proposed an idea of
7 looking at getting into the asphalt business.

8 Q All right, and did he have anyone in mind?

9 A Yes. Mr. Brass.

10 Q Okay. So he actually suggested to you, hey, this may
11 be an opportunity, right?

12 A They suggested many, many ideas.

13 Q Of course. I mean, that's their job, right? So he's
14 pitching you and the other traders all the time, right?

15 A Yes.

16 Q And he's coming to you with asphalt why, with an
17 asphalt business venture idea why? Because you're the one
18 trader that dabbles in the components?

19 MR. COOLEY: Objection, calls for speculation and
20 that was multiple questions.

21 THE COURT: Overruled.

22 THE WITNESS: Because fuel oil, the component that
23 I trade, is nearest in comparison to asphalt, meaning that
24 it is, as I mentioned to you earlier, it's a component that
25 can swing between both products.

1 BY MR. PATTERSON:

2 Q Right. So it seemed like you could fit, that you would
3 have knowledge of the markets, hedging opportunities and
4 asphalt in general, right? He thought you would be the guy
5 that knew the most or might appreciate it the most.

6 MR. COOLEY: Objection, calls for speculation.

7 THE COURT: Sustained.

8 BY MR. PATTERSON:

9 Q So he pitched it to you when again? I apologize. You
10 told me this, but --

11 A I think it was sometime in 2015 is --

12 Q 2015?

13 A I think. I don't recall exactly.

14 Q Yeah, and so by November 2016, you're talking a lot
15 more detail in getting into the asphalt business, right?
16 You have engaged with Mr. Brass and GCAC and seeing if
17 there's a deal to be made, right?

18 A Yes. We had begun discussions.

19 Q Right, and generally what did -- how did those
20 discussions start? For example, did you approach Mr. Brass
21 or did Mr. Brass get word that you were interested and he
22 called you? How did they start up?

23 A A lot of the initial due diligence was done by Mr.
24 Barth. So he liaised with Mr. Brass quite regularly in the
25 early parts of the construction of this deal.

1 Q And so if that resulted -- I'll put on your screen

2 Exhibit Number 1. Do you see that?

3 A Yes.

4 Q And so is this the first time that you talked in
5 writing with Mr. Brass or anyone at GCAC about doing a deal?

6 MR. COOLEY: Objection, mischaracterizes the
7 document to the extent the question is you talked.

8 THE COURT: Overruled.

9 THE WITNESS: I'm sorry. Your question again was?

10 BY MR. PATTERSON:

11 Q Is this kind of the first writing? Is this the
12 initiation of the written correspondence regarding the joint
13 venture?

14 A I believe it was roundabout. I don't know if it was
15 the first one. But I would say it was probably -- it was
16 one of the earlier drafts.

17 Q Right, and did you and Steve talk about -- well, why
18 the joint venture structure?

19 A As opposed to?

20 Q Anything else. Standalone corporation, a partnership,
21 being a limited partner, being -- you know, I don't know,
22 any other structure. Why the joint venture? How did that
23 come about? Whose idea was it? Do you remember?

24 A I think it was Steve Barth's idea.

25 Q All right, and just generally you talked about this a

1 little bit. But I mean, this -- as a trader, you're looking
2 for new ideas, right, as a trader at Vitol? You're looking
3 at new business ideas all the time, right?

4 A Yes and no. Not always, but sometimes.

5 Q And in fact, I mean, you're encouraged -- you're
6 encouraged to go out and seek new businesses to start or
7 invest in, right?

8 A We are.

9 Q I mean, and in fact that can impact your compensation
10 in any particular year or quarter, right?

11 A Yes, both positively and negatively.

12 Q Correct. So if you -- and let's forget about this
13 deal. You find an oil production facility in a
14 transportation terminal that is being mis-utilized or
15 underutilized. You have the capability to go out and invest
16 or purchase and turn that thing around and have it impact
17 your compensation, right, in general terms?

18 A We have the right to explore deals.

19 Q Right.

20 A Like we have the right to look at any deals that we
21 want to.

22 Q Right. You can't just go write a check.

23 A No. Correct.

24 Q Right. But you find a deal. You pitch it upwards,
25 upstairs. You get the go ahead, and it takes off. You're

1 going to be rewarded economically, right?

2 A Generally, yes.

3 Q Okay. So you thought this looked like a deal in which
4 you, being Vitol, and you could make money?

5 A That's correct.

6 Q Right, and for whatever reason it was structured as a
7 joint venture, right? You don't remember, I think you said,
8 but --

9 MR. COOLEY: Object to the form of the question as
10 to timeframe.

11 THE COURT: Sustained.

12 BY MR. PATTERSON:

13 Q As of 2016, November 2016, Exhibit 1 on the screen,
14 you're talking joint venture, right?

15 A Yes. That was -- that was --

16 Q Right. So we have an internal agreement regarding all
17 elements -- you're saying we are not representing that we
18 have an internal agreement regarding all elements of the
19 structure. So you're -- not you, but Mr. Barth, Vitol is
20 saying, correct me if I'm wrong, we don't have all the
21 internal approvals of all these details yet. But let's get
22 the ball rolling. Let's start talking, right?

23 A Well, I didn't write this email. But my
24 characterization of it would be that this was a starting
25 point for discussing a framework of a potential deal.

1 Q Right. So let's go through where this thing started.
2 Vitol and GCAC, Newco, I assume that means either GCAC or
3 some new entity to be created, right? Newco is a generic
4 reference in your mind?

5 A Yes.

6 Q All right. Which engage in discussions related to the
7 purchase of the Gravity Midstream LLC asset. What is that,
8 the Gravity Midstream LLC assets?

9 MR. COOLEY: Objection to the relevance, Your
10 Honor. The witness has testified that this never came to
11 fruition.

12 MR. PATTERSON: Okay. This is their exhibit. I'm
13 entitled to ask him about it.

14 THE COURT: Yeah. Overruled.

15 BY MR. PATTERSON:

16 Q what is the Gravity Midstream LLC assets?

17 A This was a terminal and a small refinery located in
18 Corpus Christi.

19 Q All right. And why was that important? Because I
20 thought we were talking about asphalt and now we're talking
21 about this Gravity plant. Why -- connect the dots for me.

22 A Well, in the early parts of these discussions, we threw
23 a lot of balls in the air.

24 Q Okay.

25 A And this was one of them.

1 Q And this was just -- what kind of production -- what
2 kind of plant was it?

3 A I think at the time it wasn't operational. But it had
4 a storage terminal that was onsite.

5 Q Okay. So you were looking at it more storage,
6 inventory control, than production.

7 A No, both.

8 Q Both. Okay, and who owned it at the time? Do you
9 remember?

10 A Gravity.

11 Q Gravity?

12 A I think so.

13 Q Okay.

14 A I don't recall the actual owner of it. But --

15 Q All right. And so to run through these bullet points
16 real fast so we have kind of a baseline as we go through
17 some additional emails, Vitol and Newco wish to commence
18 discussions. Right, we've talked about that. Acquisition
19 of the refinery and storage facilities. The assets consist
20 of an asphalt refinery, existing storage tanks, truck
21 loading and offloading, right? Rail handling and sufficient
22 land to construct approximately 500,000 barrels of
23 additional storage and access to various (indiscernible)
24 pipelines, other related --

25 MR. COOLEY: Objection, Your Honor. Counsel's

1 just reading the document, which we've not been doing. Is
2 there a question about the document?

3 MR. PATTERSON: Okay. That's not an objection
4 that I've ever read in the rules of evidence.

5 MR. COOLEY: Objection, sidebar.

6 MR. PATTERSON: It's just -- it's just a sidebar
7 that he wants to make a comment. He can object. Otherwise
8 I suggest he not interrupt me and I conduct my cross.

9 THE COURT: I'll sustain the objection. Why don't
10 you ask a question?

11 MR. PATTERSON: Your Honor, if I can't lay a basis
12 for a cross-examination question --

13 THE COURT: You can. But you can --

14 MR. PATTERSON: Okay. I read a piece of evidence
15 to ask him a question about, Your Honor. I can either do
16 that or say please read silently. I'm going to ask you a
17 question. It's frustrating that --

18 THE COURT: Well no, it's playing it fair on both
19 sides. And I know --

20 MR. PATTERSON: (indiscernible)

21 THE COURT: I know it's not the same, direct and
22 cross. But --

23 MR. PATTERSON: It's not, and he stood up here and
24 read six emails in a row, do you understand what this says,
25 do you have a --

1 THE COURT: I just think there's a way we can --

2 MR. PATTERSON: Well, I would --

3 THE COURT: We can (indiscernible) --

4 MR. PATTERSON: -- appreciate the ability to
5 conduct my cross-examination however I would like.

6 THE COURT: I know. I want you to hear what I'm
7 saying. I think there's a way you can do it where you can
8 tell him -- I will say this to Mr. Cooley, if he's just
9 reading one bullet at a time, it doesn't -- none of this
10 bothers me at all quite frankly. So let's just all be
11 mindful.

12 Mr. Patterson, go ahead and continue your
13 examination.

14 MR. PATTERSON: Thank you, Your Honor.

15 BY MR. PATTERSON:

16 Q Back to the email, the evidence that's already been
17 admitted, Mr. Kuo, and your bullet points coming from Vitol,
18 I was discussing them with you and making sure you
19 understood them. This site had sufficient land for
20 expansion, right, of all of those things, you felt?

21 A Well, I didn't write the email. But this was --

22 Q Correct. Your understanding --

23 A -- Mr. Barth's -- my understanding.

24 Q All right. You would continue to purchase -- the
25 parties currently contemplate 50/50 ownership. Do you see

1 that?

2 A I see that.

3 Q And that's where it started, a 50/50 joint venture,
4 right?

5 MR. COOLEY: Objection, where what started.

6 MR. PATTERSON: I know he's just trying --

7 THE COURT: No. I think both of you have been
8 doing it. I think both of you have been doing it.

9 MR. PATTERSON: That's fine.

10 THE COURT: So we can talk about what the it is.
11 Both of you have been doing it. So I'll allow it. I
12 allowed it on one side.

13 MR. PATTERSON: Right.

14 THE COURT: You can ask a clarifying question.

15 MR. PATTERSON: If he doesn't understand --

16 BY MR. PATTERSON:

17 Q You understand, Mr. Kuo, if I ask you something and you
18 don't understand what I'm asking you, you understand you
19 just need to tell me, right? So don't try to answer a
20 question you don't understand. Do we have that agreement?

21 A Yes.

22 Q Okay, and if my question comes out and you don't
23 understand or it's ambiguous or it's vague and you're not
24 sure how to answer, you'll also tell me that, won't you?

25 A Yes.

1 Q Okay, and I don't want you to try. I want my questions
2 to be clear so that we're communicating, understood?

3 A Understood.

4 Q All right. This emails says that the parties currently
5 contemplate an equal ownership of 50/50 of all the existing
6 and resulting facilities that would hold in a joint venture
7 of an agreed-upon entity, right?

8 A Yes. We were contemplating this.

9 Q Correct. I get it. This is November of 2015, right?

10 A 2016.

11 Q The first email. 2016. Right? The first email I
12 think you said -- or the first one you couldn't remember,
13 correct, right? Contemplation. That's what it says, right?
14 50/50. Also include a joint venture but possibly held in a
15 separate entity. Parties agree they will own and operate
16 wholesale and retail asphalt business, right? So you've got
17 -- you were contemplating 50/50 ownership of production,
18 storage, transportation and sales, right?

19 A There was a lot of -- there was a lot of items that we
20 were contemplating here.

21 Q Absolutely. I'm talking November 2016. These are
22 things getting thrown out, right, ideas?

23 A Yes, ideas.

24 Q Right. Also going to look at assets in Mobile,
25 Alabama, right?

1 A Yes.

2 Q Operational expenses to be borne by the joint venture,
3 which is again 50/50, right, at least contemplated right
4 now, right?

5 A That's what it says here.

6 Q Explain this piece to me, if you would. The joint
7 venture will also offer to Vitol and/or to affiliates a
8 first right of refusal for purchase of all volumes FOV
9 Corpus or Mobile. Do you recall why that piece was in the
10 initial discussion points?

11 A I believe -- I'm not a hundred percent sure. But I
12 believe that it was just giving Vitol the ability to buy the
13 product rather than selling it to the marketplace in case
14 Vitol had an interest in it.

15 Q You think that had anything to do with VALT?

16 MR. COOLEY: Object, to the extent it calls for
17 speculation.

18 THE COURT: Sustained.

19 BY MR. PATTERSON:

20 Q Did it have anything to do with VALT?

21 MR. COOLEY: Same objection.

22 THE COURT: He can answer if he knows that
23 question.

24 THE WITNESS: No. It did not.

25 BY MR. PATTERSON:

1 Q All right. Anything on here about or that you would
2 interpret to be lender-borrower arrangements?

3 MR. COOLEY: Objection, vague.

4 THE COURT: Overruled.

5 THE WITNESS: Can you scroll down a little bit?

6 MR. PATTERSON: Sure.

7 THE WITNESS: The next statement under that.

8 MR. PATTERSON: I'm sorry? Where?

9 THE WITNESS: Under your red line of -- right
10 there.

11 MR. PATTERSON: Here?

12 THE WITNESS: The joint venture agrees that it
13 will use utilize Vitol's purchasing and credit capacity.

14 BY MR. PATTERSON:

15 Q Okay. So the joint -- and it reads, for the record,
16 the joint venture agrees that it will utilize Vitol
17 purchasing and credit capacity for the purpose of acquiring
18 feedstock or product to be processed or sold through the
19 joint venture, right? So Vitol credit capacity, and you
20 think that has some reference to financing for GCAC or
21 lender-borrower?

22 A Yes.

23 Q Okay. Anything else?

24 A No.

25 Q All right. Now you said earlier this morning and this

1 afternoon when your lawyer was talking to you that -- before
2 we get there, when did you find out you were coming here
3 today to talk to us?

4 A You mean that I was going on the stand?

5 Q Mm-hmm.

6 A Friday, I think.

7 Q And when did you find out you were going to be a
8 witness at this trial, not any particular day, but that you
9 were going to be a witness?

10 A Oh, gosh. I think -- I don't know. I don't know.
11 Six-plus months ago.

12 Q All right.

13 A Maybe. I really don't know when the exact date it was.

14 Q And so what did you do once you found out you were
15 going to be a witness? What did you do? Did you go back
16 and review docs, talk to people, ask people questions?

17 A No, I didn't, because this has been going on for five
18 years now, six years, five years. So no, I did not review
19 any.

20 Q Didn't look at anything?

21 A Not really. Not really.

22 Q Well, not really means maybe something, right?

23 A Well, I spoke with our lawyers.

24 Q Right. What did you read?

25 A What do you mean?

1 MR. COOLEY: Objection, vague. Can we get a
2 timeframe? What's the timeframe we're asking about?

3 THE COURT: Sustained. I think that's fair.

4 BY MR. PATTERSON:

5 Q You understand that the scope of my question goes back
6 to when you found out you were going to be a witness today,
7 right, Mr. Kuo? You understood that, right?

8 A No.

9 Q Okay. I'm telling you, so --

10 A Okay.

11 Q Going back to when you found out you were going to be a
12 witness at trial, what have you read in preparing for your
13 testimony?

14 A Nothing outside what my attorneys gave me.

15 Q Okay. What did your attorneys give you to read?

16 MR. COOLEY: And I just want to -- Your Honor, I
17 just want to instruct the witness because I suspect we're
18 going to get into a similar area, that the witness should
19 not describe any content of any conversations. I just want
20 to give that admonition to the witness before the witness
21 delves into this area.

22 THE COURT: I'm sure you'll jump up if he starts
23 to say something. So I think he can answer the question of
24 what he reviewed.

25 THE WITNESS: I mean, I don't know what you're

1 asking. Do you want me to tell you every document that they
2 gave me?

3 BY MR. PATTERSON:

4 Q Yes.

5 A I don't recall every document.

6 Q Okay. Tell me the documents you do recall.

7 A Most of them were in these exhibits.

8 Q Okay. But I need you to tell me the ones you do
9 recall.

10 A I recall seeing the reconciliation.

11 Q Performed by whom?

12 A By Mike Ruzic.

13 Q That email that you looked at, that reconciliation?

14 A No. It was a spreadsheet with all the details of each
15 transaction.

16 Q Oh, because you referred to that email as a
17 reconciliation, or your lawyer did, right? That's not a
18 reconciliation?

19 A Yes, it was.

20 Q It was. It's one and the same?

21 A It is the same.

22 Q It's the same thing?

23 A It is --

24 Q Or is it a summary?

25 A It's a summary of the reconciliation.

1 Q Ah, okay. It's not the same. It's different. The
2 same numbers, the same total.

3 A They all come from the same spreadsheet.

4 Q Okay. I got it. The email was compressed into a
5 summary, right?

6 A The figures were compressed into a summary, yes.

7 Q Right, right, and you're saying there's a spreadsheet
8 that's much more detailed than Mr. Ruzic prepared.

9 A Yes. He prepared that for everybody, including Mr.
10 Brass.

11 Q All right, and so you looked at that. What else?

12 A I mean, if you're asking me to tell you the specific
13 title of the email or the subject, I don't know.

14 Q Tell me what you remember.

15 A I remember some emails between myself and Mr. Brass
16 asking for repayment of the debts that he owed. I remember
17 reading some emails about the suits filed, like the one that
18 was presented as evidence. I remember emails based on the
19 transactions that were done by GCAC.

20 Q All right. Anything else?

21 A I don't know. We looked at, you know, all the
22 documents that have been shown today.

23 Q They reviewed all the exhibits ahead of time that they
24 showed you today?

25 A I don't -- I didn't see them all.

1 Q All right. Some?

2 A Some.

3 Q Okay. Anything else that you can think of?

4 A I mean, no.

5 Q Is that a no, I don't think so, or a no, there's too
6 many or --

7 A There were a lot of documents.

8 Q Right.

9 A So if you're asking me if I can tell you every single
10 one, I don't know.

11 Q But were they in paper form, electronic? How did you
12 see them?

13 A On paper.

14 Q All right. So a hard copy. Did they give you a
15 notebook?

16 A Well, they didn't give it to me. But I saw a notebook.

17 Q They put a notebook in front of you with documents,
18 right?

19 A Yes.

20 Q All right, and how long did you spend going through
21 those documents?

22 A Minutes.

23 Q Minutes?

24 A Yes.

25 Q oh, how thick was this notebook?

1 A I don't know. There were probably 25 different
2 exhibits.

3 Q I mean, was it a half-inch binder, or was it a three-
4 inch binder?

5 A No. It was less than a half-inch.

6 Q Less than a half-inch? A quarter inch binder?

7 A I don't recall exactly the size of the binder.

8 Q It was a small binder, not a big binder?

9 A Not a big binder, right.

10 MR. PATTERSON: Judge, we'd likewise ask
11 production of this notebook, of course.

12 MR. COOLEY: Object on relevance grounds.

13 MR. PATTERSON: There is no relevance. The rules
14 say I'm entitled to it.

15 THE COURT: Are you asking for it to the extent
16 that there were some documents that were shown to the
17 witness that are not on the witness and exhibit list?

18 MR. PATTERSON: Absolutely.

19 THE COURT: Okay. No, no. I'm just -- I'm asking
20 for the clarification.

21 MR. PATTERSON: Yes. I'm asking -- he was given a
22 notebook of documents.

23 THE COURT: I just want to make sure that I
24 understood what the --

25 MR. PATTERSON: Yes. Everything in the notebook.

1 It has nothing to do with admissibility. The rules say that
2 if he reviewed it in preparation, I'm entitled to it.

3 THE COURT: Mr. Cooley?

4 MR. COOLEY: Your Honor, the documents -- it cuts
5 both ways. The documents that counsel might think that are
6 relevant for a witness to review and documents that counsel
7 might think are not relevant or may have probative effect
8 one way or another delves straight into the question of --
9 the matter of attorney work product.

10 THE COURT: I think --

11 MR. COOLEY: The documents themselves --

12 THE COURT: I mean, not what was said about them,
13 but that objection, if you look at the decision, is
14 overruled. It doesn't get into attorney work product. Just
15 take a look at the (indiscernible) decision. It's already
16 there. That issue has been decided by the district court.

17 The work product objection was specifically
18 considered in the very decision that I read, and you'll see
19 that it doesn't -- at least in the Southern District of
20 Texas, that that doesn't go. So I think they're entitled to
21 it. But I think we can continue now.

22 MR. PATTERSON: Correct. They'll just get it to
23 us today.

24 MR. COOLEY: Well, I -- we'll get those assembled,
25 Your Honor.

1 MR. PATTERSON: Thank you, Your Honor. Well, it
2 should be assembled. It's a notebook.

3 BY MR. PATTERSON:

4 Q Now I know you said you talked to your lawyers, and I
5 don't want to know what you talked about. Did you talk to
6 anybody else to prepare?

7 A I did not.

8 Q Did you talk to Mr. Loya?

9 A I did not, not about the case.

10 Q What did you talk to him about?

11 A When?

12 Q Well, you clarified and said not about the case. I
13 assume you were thinking of talking to Mr. Loya and you felt
14 like you had to clarify. When is it that you spoke to him?

15 A You asked me if I spoke with anybody about the case,
16 and I said no. Then you asked me if I spoke to Mr. Loya.

17 Q When is the last time you spoke to Mr. Loya?

18 A He was in the office a week or two ago.

19 Q All right, and what did you all talk about?

20 A What he's been doing. He's been retired and where he
21 resides. That's about it, nothing regarding the case.

22 Q Nothing about the case --

23 A Nothing.

24 Q -- your testimony, anything.

25 A Nothing.

1 Q I mean, did the lawsuit come up?

2 A No.

3 Q Did Mr. Brass come up?

4 A No.

5 Q Not even any comments or offhanded remarks about the
6 lawsuit or, you know, nothing?

7 A No.

8 Q Did you say -- well, how long had it been since you'd
9 seen Mr. Loya since then, since before then?

10 A I don't know. Maybe a year.

11 Q And did you say what are you doing here?

12 A No. I mean --

13 Q You didn't?

14 A No. I don't question why he's there.

15 Q I mean, he hadn't been there in a year, right?

16 A Maybe he had. I don't know. I don't see him every
17 time he walks into the office.

18 Q I understand. But you hadn't seen him in a year,
19 right? As far as you know, he hadn't been to the office in
20 a year, right?

21 A I had not seen him.

22 Q Right, and you didn't say, hey, what are you doing here
23 --

24 A No.

25 Q -- what's going on, why are you over here? No?

1 A No.

2 Q Nothing? Okay. Didn't talk to anybody else about the
3 lawsuit or your testimony?

4 A I did not.

5 Q Okay.

6 A Outside of my attorneys, no.

7 Q Right, right, and I don't -- of course, of course. And
8 you haven't talked to your general counsel, in-house?

9 A About this case?

10 Q Mm-hmm.

11 A The general counsel? No.

12 Q Okay. Back to your testimony this morning --

13 A If you're asking about Vijay, he's not my --

14 Q I'm sorry?

15 A Did you ask about Vijay or are you talking about --

16 Q Yes.

17 A Well, he's not the general counsel.

18 Q Okay. He's the one that's been here, right? Did you
19 talk to him?

20 A To Vijay?

21 Q Yeah.

22 A Yes.

23 Q About the lawsuit?

24 A Yes.

25 Q And about your testimony?

1 A We didn't -- I mean, what do you mean about the
2 testimony?

3 Q Well, did he -- like, for example, did he give you an
4 outline to read about what you were going to be asked? Did
5 he tell you how the case was going, anything like that?

6 A He did not.

7 MR. COOLEY: Objection, privilege, the attorney
8 work product.

9 MR. PATTERSON: No. Neither one of those things
10 are privileged, Judge, because they're -- well, I won't say
11 because of the witness here. But neither one of those are
12 privileged under any privilege that I am aware of.

13 THE COURT: You mean a witness can't talk to their
14 general counsel? It's not privileged conversation in
15 connection with a lawsuit?

16 MR. PATTERSON: No. Yeah. We're going to go in
17 depth, but you have to go back to the content of my
18 question, Judge. There are things -- there are things that
19 are not protected even because you talk to a lawyer or your
20 lawyer about it, right?

21 THE COURT: Agreed.

22 MR. PATTERSON: So neither of those topics are
23 privileged under any scenario.

24 THE COURT: I'm not sure about that. But we'll
25 see where it goes.

1 MR. PATTERSON: All right.

2 THE COURT: I think the question you asked him is
3 certainly covered.

4 MR. PATTERSON: I'm sorry, Your Honor?

5 THE COURT: I think -- well --

6 MR. PATTERSON: The rule was invoked.

7 THE COURT: Yeah, I know. I think --

8 MR. PATTERSON: We'll be careful and I'll go slow,
9 and if the Court disagrees with where I'm going --

10 THE COURT: That's all I'm saying. We're going to
11 take it one by one.

12 MR. PATTERSON: Of course.

13 BY MR. PATTERSON:

14 Q Did anyone, including Vijay, talk to you about how the
15 trial was going or testimony that had come out so far?

16 MR. COOLEY: Objection, compound, and I'm not sure
17 what time period we're talking about.

18 MR. PATTERSON: The trial.

19 THE COURT: Mr. Kuo, I think you can answer that.
20 Mr. Patterson, why don't you ask the question again just so
21 he --

22 BY MR. PATTERSON:

23 Q All right. Did you talk to anyone about how the trial
24 was going? We'll start there.

25 MR. COOLEY: Objection, privileged.

1 THE COURT: I don't --

2 MR. PATTERSON: Anyone, and an identification
3 would not be privileged. Only contents are privileged.

4 THE COURT: Clarification -- I think the
5 identification is different than the content of the
6 conversation.

7 THE WITNESS: I told my wife I was coming to court
8 if that's what you're -- if you're asking if I talked about
9 the trial. I told her I was coming to court.

10 BY MR. PATTERSON:

11 Q Right, and I'm -- no. My question is did you talk to
12 anyone about what has transpired at the trial so far prior
13 to today and through today.

14 A I asked, and they wouldn't tell me.

15 Q All right, and has anyone -- have you talked to anyone
16 about the testimony that's been provided up through today in
17 this trial?

18 A The testimony by whom?

19 Q Anyone.

20 A Yeah. I asked, and they wouldn't tell me.

21 Q Okay, and in your prior testimony, let's go back to
22 this morning as you started talking about Exhibit Number 1,
23 the November 2016 email. You read a statement that GCAC
24 needed our financing. Do you remember that?

25 A In what context? I mean, I'm not sure.

1 Q That was your testimony. You said that GCAC needed
2 your financing and that was part of why the impetus of this
3 Exhibit Number 1, this email.

4 A Yes. I remember it.

5 Q Okay. How do you know they needed your financing?

6 A They told us.

7 Q They said we need your money?

8 A They said they needed our -- they needed -- our balance
9 sheet was stronger than theirs.

10 Q Right. \$300 billion and a local, right? Of course.
11 You're much bigger, much stronger, right Anything else with
12 respect to needing financing that was relayed to you or any
13 of your business development guys?

14 A By?

15 Q Mr. Brass, anyone at GCAC.

16 A I don't know about Mr. Barth. But for me, I don't -- I
17 mean, there were multiple discussions about financing and
18 capital.

19 Q Right, and at least through, let's start at, at least
20 through November of 2016, as far as you know, Vitol had
21 never been a lender in any transaction. Isn't that true?

22 A No. I don't believe that to be true.

23 Q All right. Who did they loan to?

24 A I don't know the specifics. I'm a fuel oil trader. I
25 don't know. there's many products across the organization.

1 There's many -- there's public pre-finance deals that Vitrol
2 has done for countries, for oil companies and there's a
3 multiple -- there's (indiscernible) --

4 Q Okay. So does that mean that you know of financing
5 deals or you just know that some existed?

6 A I don't know the specifics. I know some existed.

7 Q All right.

8 A I don't know the specifics of each one.

9 Q All right. Very large deals, I assume, right?

10 A I don't know the sizes of them.

11 Q You don't know. And do you know if it was -- well, you
12 don't know any details, do you, of any of these lending
13 transactions?

14 MR. COOLEY: Objection, vague.

15 THE COURT: Overruled.

16 THE WITNESS: I don't know the specifics of the
17 deals.

18 BY MR. PATTERSON:

19 Q Okay, and I think you said you've never funded deals
20 before, right, at Vitrol?

21 A I said that?

22 Q That's what I wrote down. I was listening to you and
23 you said, as far as you know, Vitrol had never funded a deal
24 before. You had provided funding support or financing,
25 paying for a product, but never funding.

1 MR. COOLEY: And, Your Honor, I'll object to the
2 extent it mischaracterizes the testimony. The testimony was
3 what it was.

4 THE COURT: He can answer as to whether he recalls
5 that was his testimony.

6 THE WITNESS: I vaguely remember saying -- talking
7 about the funding. I'm not sure if it was in the context of
8 me personally or Vitol as an entity.

9 BY MR. PATTERSON:

10 Q Right. All right. Now after this first email in
11 November of 2016, discussions continued with GCAC between
12 you, Mr. Brass, GCAC, Vitol, your business development guys,
13 right?

14 A Yes.

15 Q When did the lawyers get involved?

16 A When did the lawyers get involved with?

17 Q Drafting the joint venture agreement.

18 A Oh. I don't remember. I think somewhere probably in
19 that timeframe, maybe as early -- I think there was an
20 exhibit. I recall a draft that was sent back and forth
21 between lawyers. I don't remember exactly when it was
22 drafted. But it was -- I think it was early 2017.

23 MR. PATTERSON: Sorry for the delay, Judge. One
24 second.

25 THE COURT: Take your time.

1 BY MR. PATTERSON:

2 Q And so when did you actually start -- I say you, you
3 and Vitol start entering into what I'll call transactions
4 that involved the GCAC.

5 A I believe it was in July, early July of 2017.

6 Q In July of 2017?

7 A I believe so.

8 Q And why and under what circumstance did you start
9 participating in transactions with GCAC in July?

10 A When did we start participating in transactions with
11 GCAC? Is that what you said?

12 Q Well, you said it was sometime in July, right? Right?

13 A The first iteration of it was when we purchased some
14 oil from Rio Energy. I think it was in early July.

15 Q Right, and isn't it true that -- well, let's give some
16 context. GCAC was in a prior joint venture with Rio,
17 correct?

18 A I believe so.

19 Q And you were aware of that, right?

20 A Yes. I was.

21 Q And isn't it true that in late June and into July of
22 2017, discussions were being made for Vitol to buy out Rio's
23 position in that joint venture, right?

24 MR. COOLEY: Objection, vague.

25 THE COURT: Overruled. He can answer.

1 THE WITNESS: The discussions were not necessarily
2 that we were entering into Rio's JV, but that we would have
3 a separate joint venture with GCAC.

4 BY MR. PATTERSON:

5 Q And my question is weren't you discussing purchasing
6 their interest in the joint venture that they were in with
7 GCAC.

8 A That's not how I remember it.

9 Q You don't recall it that way?

10 A I do not.

11 Q Okay, and once you started entering into transactions
12 that involved GCAC in July of 2017, how often were
13 transactions entered into that involved GCAC?

14 A I'd have to look at the records. I don't know how
15 often they were done. Maybe once or twice a week. I'm not
16 sure of the frequency of them.

17 Q But maybe, at a minimum, once a week?

18 A Potentially.

19 Q And so when was -- when was the joint venture agreement
20 executed?

21 MR. COOLEY: Objection, assumes facts not in
22 evidence, mischaracterizes prior testimony.

23 THE COURT: Sustained.

24 MR. PATTERSON: I didn't assume anything. I asked
25 him if there was -- when --

1 THE COURT: You said when was the joint venture --

2 MR. PATTERSON: That's right.

3 THE COURT: -- signed.

4 MR. PATTERSON: Right.

5 THE COURT: I think that's assuming facts not in
6 evidence, right?

7 BY MR. PATTERSON:

8 Q When did you finalize the documents for the joint
9 venture that started back in November of 2016?

10 MR. COOLEY: Objection, assumes facts not in
11 evidence, mischaracterizes prior testimony.

12 THE COURT: He can -- he can answer the question.
13 But I'll allow it.

14 THE WITNESS: I'm sorry. Can you rephrase the
15 question again?

16 BY MR. PATTERSON:

17 Q When were the joint venture documents finalized?

18 A They were never finalized.

19 Q Never finalized? How close did they get?

20 A I don't recall because I was not part of the legal
21 proceedings on back and forth with the redline. So they
22 were -- I can't tell you how close they were.

23 Q They were? Were you not involved to the very end?

24 A I was. But at one point -- at some point it was mainly
25 the lawyers going back and forth.